

LIFE AND CONDITIONS IN SCOTTISH PRISONS

FROM

EARLIEST TIMES TO THE PRESENT

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A THESIS PRESENTED FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY
IN THE UNIVERSITY OF EDINBURGH 1977.



ABSTRACT OF THESIS

In early and Medieval times in Scotland there was no imprisonment in the modern sense. Prison was mainly custodial, where the wrong-doer was housed until dealt with by execution, banishment, punishment by mutilation or public humiliation. The object of authority usually was to get rid of the wrong-doer as swiftly and permanently as possible. Prison did not loom large in the scheme of things.

The sixteenth century found Scotland a lawless, turbulent society. The absence of a strong central authority meant that the power of pit and gallows wielded by the barons in their heritable jurisdictions was virtually unlimited.

Following the Reformation the Presbyterian Church took over ^{some of} the functions of the temporal authority, such as it was, and their jurisdiction operated in parallel and in competition with the jurisdictions of the barons. They were concerned less with law and order than with the enforcement of a religious code of behaviour, so that the emphasis on punishment shifted from crimes secular to offences against a moral and religious code.

In the early eighteenth century the Presbyterian dynamic petered out and the influence of the Church had waned. The Union of 1707 brought Scotland under a stronger central authority, and the abolition of heritable jurisdictions resulted in a unified system of administration of justice. Nevertheless the theory of the offender as a disposable nuisance remained a convenient expedient, and the Colonies took the place of the next parish as a dumping ground for undesirables.

In the eighteenth century reformers like Howard, Elizabeth Fry, Neild and Gurney, appalled at the squalor of the congregate system, attempted to alleviate prison conditions but had to contend with a public opinion apathetic or at times hostile.

The insane led lives of misery and degradation, chained in darkness in the prisons or hidden away in lofts and box-beds in their homes, until the establishment of Lunatic Asylums in the early nineteenth century.

The problem of housing and securing French and American prisoners-of-war led to the building, for the first time, of prisons on a scale familiar today.

With the end of transportation in 1867, imprisonment became the normal penalty for most serious crimes, and the influence of American advocates of solitary confinement meant the replacement of the promiscuous congregate system by isolation in the grim nineteenth century fortresses with their emphasis on repression and punitive deterrence.

The twentieth century places emphasis generally on rehabilitation and reform. Alternatives to imprisonment are suggested for many offences and there is an increasing tendency to "treat" the criminal within the community and to use non-custodial methods. The public's attitude is changing towards particular types of behaviour, with the result that acts called "crimes" in one age become permissible in another.

The thesis poses the question whether concern for the rehabilitation of the offender may be over-stressed at the

expense of the victim and of the security of society as a whole. It also questions whether in the absence of any real consensus about the purpose of imprisonment, or indeed its desirability, there can be said to be any coherent philosophy of penology.

Acknowledgements

No thesis, nor for that matter any task involving research, is the work of its author alone, who must depend for instruction, encouragement and advice upon a number of other persons. In making my acknowledgements I must give pride of place to Professor Gordon Donaldson, without whose wise counsel, support and encouragement this work would never have neared completion. My thanks are also due to Mr. Easterbrook of the Signet Library, who went to endless trouble to unearth forgotten and dusty volumes on my behalf, and to the librarians and staffs at the West Register House, the National Library of Scotland, the University Library, the United Services Museum at Edinburgh Castle, the Sandeman Library, Perth, and Perth Museum, and the Town Library of Lexington, Massachusetts. Professor Macrae of the State Hospital, Carstairs, helped me willingly in correspondence and provided me with unsuspected and useful printed matter. Mr. Russell of the Royal Edinburgh Hospital could not have been more helpful in showing me original documents from the Hospital Archives. My diffident approaches to the Governors of a number of prisons produced not only a warm welcome when I visited them but also a positive eagerness to impart information, and my thanks are due to them and their staffs at Perth, Barlinnie, Saughton, Dumfries, Penninghame, Gateside, Cornton Vale, Friarton Borstal and Charles Street Jail, Boston, Massachusetts. I would also make a special mention of the kindness of Mrs. Stewart Stevens of Balnakeilly, who gave me

free access to her family records, a valuable source. My thanks also go to Mrs. Dale for her cheerful competence in deciphering my handwriting and in typing the thesis. And finally a grateful word to my family, who have agonised with me over this exacting but stimulating research and who have given me unfailingly their warm support.

LIST OF LOCATIONS

E.U.L.	University of Edinburgh Library.
L.P.L.	Lexington Public Library, Lexington, Massachusetts.
N.L.S.	National Library of Scotland, Edinburgh.
P.M.	Perth Museum.
R.E.H.	Royal Edinburgh Hospital (Board Room).
Sa.P.L.	Sandeman Public Library, Perth.
S.L.	Signet Library, Edinburgh.
S.R.O.	Scottish Record Office, West Register House, Edinburgh.
U.S.M.	United Services Museum, Edinburgh Castle.

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Introduction

To explain the approach to this subject it must be stressed that through the centuries there has been no coherent philosophy of penology. We cannot trace an evolving philosophy which arrives at a consensus in modern times, for even now there is no such consensus. There have been and continue to be three conflicting bodies of opinion as to what the objective of prison is. These are not necessarily mutually exclusive, and are to be distinguished rather by the emphasis they place on and the priority they give to particular objectives.

First there is the authoritarian, which generally speaking is not concerned with the individual, but with the protection of society and the practical problem of the disposal of the offender. Second, the reformers, of comparatively recent times (until Howard there was little concern for the criminal), among whom there have always been splinter groups. Usually they tend to concentrate on the humane treatment and rehabilitation of the offender rather than on the protection of society. Even then they differ as to the method of rehabilitation. The historian must be on his guard against crediting the reformers with greater achievements than they have actually accomplished. Their views on what ought to be done receive more publicity than what the authorities in fact carry out. Thus their results are apt to get out of focus. Reformers have always to contend not only with impatience on the part of authority but with the apathy or vindictiveness of public opinion. Third, public opinion, which has been largely indifferent throughout history, but showing a compound of fear, vindictiveness, emotionalism and sheer apathy, at times

coloured by religious influences. Here too there is ambivalence. To the extent that the public shows concern it is with alternatives of retribution, rehabilitation, or merely incarceration of the wrongdoer where he can do no further harm.

So there always was and continues to be a conflict of wills among the three. A compromise has never been worked out. These conflicting opinions dictate prison conditions which are related to and dependent on the changing attitudes and moods of society. The function of prison has changed very slowly through the centuries from the purely custodial (while awaiting death, mutilation, banishment) to imprisonment for reasons of deterrence and rehabilitation, with an increasingly strong emphasis on the latter in the later 20th century. Practices reprobated in one period are condoned in another, or frankly disbelieved (for example, witchcraft), and punishments fitted to an affluent society will not do for a poorer one. Inevitably new crimes are created and some abolished as society grows more sophisticated. The philosophy favoured by contemporaries in deciding what offences should be punished must be taken into account.

The fact that there is no coherent philosophy of the purpose of imprisonment is a universal failing, but in Scotland the situation was exacerbated, at least until the abolition of heritable jurisdictions, by the lack of a sense of national unity, and by isolation of individual districts resulting in a sense of irresponsibility towards the community as a whole, which led to a tendency to evade responsibility for wrongdoers.

Because of the lack of a consensus the student of the history of prison conditions cannot trace a single developing trend, and can only observe, analyse and comment on the effect of these conflicting opinions on conditions in Scottish prisons, and attempt to draw some conclusions.

CHAPTER I

EARLY AND MEDIEVAL IMPRISONMENT TO 1560

Early and Medieval Imprisonment to 1560.

In early and medieval times the function of imprisonment everywhere in Europe was purely custodial. There were no prisons in the modern sense. "So long as death, mutilation, banishment, and the infliction of physical suffering or public indignity were the principal methods of dealing with offenders, prisons remained for the most part places of confinement rather than of punishment."¹ "From a punitive standpoint mutilation, death, outlawry and, above all, compensation in cash were, in a general way, the proper punishments for what are now called crimes, though milder ones were advocated. Imprisonment is always costly to the captor, and in a primitive society there is always a strong temptation to enforce a line of conduct on a defaulter by pledges or payments rather than by detaining his body."² In Scotland, "owing to the poverty of our records we know very little about the structure of society and the life of the people, or about 'government' and the maintenance of law and order, prior to the reign of David I and the introduction of Anglo Norman feudalism. The only extant 'laws' that possibly pertain to this period are those contained in a code known as the laws in use among the 'Bretts and Scots',"³ but that code is little more than a society valuation roll. It gives a scale of fines regulated by the rank of the injured person and the nature of the crime. Thus the cro or blood money for killing the king is given as "1000 cows... for the King's son 150 cows... For killing athane 100 cows". In the

lower ranks, the fine for killing a carl was 16 cows. Penalties for lesser crimes were treated with equal minuteness - if anyone drew blood from the head of a king's son the fine was 9 cows, and so on down the line.⁴ From the reign of David I (1124-53), with the steady growth of records and charters, we learn much more. David granted the rights and privileges of justice with land, and this meant jurisdiction over all the inhabitants of the land conferred by the charter. It was granted with sac and soc, toll and them, pit and gallows (*fossa et furca*), *infangthef* and *outfangthef*, that is, with the right to hold courts, fine, imprison, hang or drown vassals. Mackenzie says, "a Barron properly, is he who is infest with power of Pit and Gallows, *fossa et furca*", and the "Povver of Pit and Gallows would impart the power of judging Life and Death".⁵

Apart from baronial rights, almost the only reference to imprisonment at this stage is in an Assize attributed to David: it states that if a man was accused of theft and had no "plegius" he was to be kept in prison until the next court unless he was taken "red-hand"-"Gif ony man be challangyt of thyft and may fynd na borowis the kyngis justice sall tak hym in keping... and gif he hes na parti folowand hym he sal be haldyn in prisoun quhil the nixt court sa that men may weit of his estate".⁶ But the domination of baronial justice emerges in a later act, attributed to Malcolm II but clearly not earlier than the twelfth century, which states that a thief was to be "led

to the presoun of the baron in quhais barony he beis takin".⁷

William the Lion (1180) enacted that no bishops, earls or barons should "have leave to hold court of life and limb, as of judgement by battle, or water, or hot iron, unless the King's Sheriff or his Sergeant be thereat to see if justice be truly kept as it ought to be".⁸ But gradually the authority of barons in civil and criminal matters became practically absolute. Besides, not only did barons hold their baronies with power of pit and gallows, but gradually royal charters granted more and more of the King's rights of justice, including in certain cases the Four Pleas of the Crown - murder, rape, robbery and fire-raising.⁹ Not granted was jurisdiction in the crime of treason (crimen majestatis). Barons "had become no longer holders in baroniam but holders in regalitatem. The regality was still a barony, but a barony with fuller jurisdictional and administrative rights".¹⁰

Scotland became divided into royalties and regalities, "into those lands in which the King's writ ran, and those in which it did not".¹¹ There were also baronies within the regalities, held from earls, not from the King. The earl would grant the barony with its rights of public justice to be held directly of the earl, although almost always with the proviso that the body was to be executed on the earl's gallows and the ordeal to be held in the earl's court.

The principle of delegated justice, stemming ultimately from the crown, was sound enough, but when human frailty

crept in a very different picture emerged, and it has even been said that feudalism, although a power for good to begin with, "eventually degenerated for the most part into an instrument of petty tyranny and greed",¹² for the record of a Baron Court suggests that "everything is so adjusted as to serve the interest of the strong against the weak".¹³

"It is impossible to say when the baron courts began to keep records of their proceedings. The court of the regality of Aberdeen was certainly keeping record as early as 1382... and there has been preserved a roll of five meetings of the baron court of Longforgan held possibly in 1385-1386".¹⁴ The latter is the earliest existing record of the holding of such a court, but records were probably kept from a much earlier date for the larger erections, particularly those held by the church. In England there is secondary evidence that the Abbot of Ramsey had begun to keep court rolls as early as 1239,¹⁵ and very likely Scottish prelates did likewise. But even after our records do begin, the entries for criminal actions before the baronial courts "are so brief that they afford no clue as to the procedure which was followed... All the enactments bespeak summary justice, and the meagre entries in the court books tell the same tale".¹⁶ These remarks were made of the Baron Court of Carnwath, where the greater number of actions coming before it fell within the quasi-criminal group.

In the barony and regality courts, summary justice was swift and the fearsome pits or dungeons of the heritable

jurisdictions were generally not occupied for long.

Barons were realists and did not indulge in the pointless and unnecessary expense of keeping and feeding prisoners.

The object of captors in this period and all through the centuries up to the abolition of transportation ^{at} in 1867

was usually to get rid of the wrongdoer; to have him

"clenzit or conviktt" - to be either freed or hanged. A

wretched thief "caught infang, receives short shrift".

If a notour or common thief he had his ears cropped and

cheek branded, and it only remained - and he had not long

to wait - that he be whipped at a cart-tail and hanged till

he be dead upon a neighbouring gallows.¹⁷ Yet, while that

may be the general picture, there are indications that

exceptions to such speedy justice were sometimes made from sheer indifference, or from private hate and vengeance:

thus the "wicked Earl of Caithness" put his own son into

the pit of his Castle of Girnigoe near Wick, where he lay

abandoned, filthy, half-starved, until he died a raving

lunatic six years later.¹⁸ In baronial pits prisoners

could be kept indefinitely, and no questions asked - the

length of time depended entirely on the character and whim

of the all-powerful baron.

Many of the surviving medieval castles still show the

pit-prison. For example, at Threave Castle, on an island

in the River Dee in Galloway, the 14th century stronghold

of the Black Douglasses, can still be seen the gruesome pit

in whose gloomy depths the victims of Archibald the Grim

languished without hope. But the Douglasses also boasted

that the castle's "gallows knob", a stone which projects from the outer wall at a giddy height, was never without a "tassel". Again, at Dunvegan Castle in Skye there is a "horrid pit" entered by a trap-door in the floor. It is sixteen feet deep, without light or air save what filters through the trap. Here the wife of Iain, fourth chief of the Macleods in the mid-14th century, starved to death her own two daughters.

The "pit" referred to in the phrase "pit and gallows" was the prison and had no connection with the drowning of malefactors, though "It is still possible to find the first element of the phrase misunderstood in the explanation of the gallows as for male criminals, and the pit for the more respectful disposal of women criminals by drowning".¹⁹ It is true that "the punishment of death inflicted upon females at this early period and for more than two centuries afterwards, was, universally, drowning; and, in cases of very heinous crimes, burning at the stake".²⁰ And it is also true that sometimes a man would be drowned instead of hanged: in July 1568 the Regent Moray, determined to repress lawlessness, "rode to St. Andrews, and causit drown a man callit Alexander Macker and six more, for piracy".²¹ The drowning-pit for ordeal by water was well known in England; and in Scotland "in the records of the Baron Courts, those found guilty of theft were not infrequently drowned".²² It is possible that in the very early period wrongdoers were drowned in some form of pit

which, like the gallows, may have been outside the castle. Later, the fossa or pit within the castle walls was certainly nothing more than the baron's dungeon. "The lord liked to know that he was sitting safely in his house with his enemy securely immured in the pit below".²³

Thanks largely to the strong construction of medieval castles, we know more about the pits in which the owners of heritable jurisdictions kept their prisoners - if only until they could get rid of the offender - than about any other Scottish prisons of the period. We can assume that in a village there might be a place of custody, too primitive to be dignified by the name of prison and called simply "the theivis' hoill". Like the average domestic building of the time it would probably consist of a small thatched hut with a damp earth floor and a small opening through which meagre rations were pushed if the captive was lucky. But it was virtually impossible to keep prisoners in the hut, there being no regular jailer. Break-outs were easy and frequent. The fact is that, as prisons were of only limited usefulness, the community would not go to the expense of constructing elaborate and permanent structures even in the smaller towns, where any empty hovel would be deemed sufficiently convenient to house temporary ^{il} malefactors. There, too, security was quite ineffective and escapes were common.

Some larger towns, however, could boast of two prisons. There were the castle dungeons, where state and political

prisoners continued to be kept throughout the centuries. In 1528-29 many border lairds "were wardit" in various castles - Edinburgh, the Insche, Blackness, Falkland and Doune.²⁴ There were also the Tolbooths, where more ordinary prisoners were sent. A Tolbooth was originally a booth at a fair, where dues or tolls were collected and offenders against the fair regulations were detained. Gradually it became the building in which the courts of justice met and criminals were imprisoned. In any early Scottish burgh, "after the Church, the Tolbooth or Town House was the principal edifice. It comprised council chamber, court room and prison and was at first a tower structure, as at Tain, and later a hall and attached tower, approached generally by a forestair".²⁵ Nearby was the town cross, from which proclamations were made and criminals punished. The thieves' hole in the Old Tolbooth of Edinburgh was presumably the "sext buith", which was "maid a presoun" in 1480-1, and which is occasionally referred to as the nether hole".²⁶

Fifteenth century statutes certainly assume the availability of prisons. An Act of James I states that if a man is guilty of "forthocht felony or throw suddande chaudemellay" then "the life and the gudes of the trespassour to be in the Kingis will, to quhais preson he salbe sende incontinent".²⁷ An Act of James III of 1487 entitled "Of the keeping of arreisted trespassoures" states "That thairfore in tyme to cum quhar ony crounar arrestis

and takis sic trespassouris he sal bring thaim to the schereff of the schir, quhilk schereff sal ressave thame and kepe thaim in souuerte and fermane on our souveran lordis expensis quhar it failzeis of thair aune gudis".²⁸

By this Act the Crown undertook responsibility for safe custody of prisoners before trial, either by imprisoning them in the King's castles or by handing them over to the Sheriff to be maintained at the cost of state, failing resources of their own. It has been said that "There is little doubt but that the King's prison was the King's castle, while the Sheriff's prison meant that the transgressor was warded in the house of an officer of the Crown or of the burgh".²⁹

The general term for confinement came to be "warding", and "the term 'in ward' was applied for several centuries to all who were sent to prison".³⁰ "A man might be warded in the Castle, the Tolbooth, his own house, or private lodgings, and the confinement might be close; or within an area of two, three, or four miles, or otherwise, as specified, and generally those in ward had to 'remayne upon thair awin expenses'. Full liberty in ordinary cases could be procured by getting some responsible person to become security for the reappearance of the individual in ward when required".³¹ Often those committed to ward within a prison were kept there only until they had paid or found security for payment of a fine, often in kind.

Edinburgh's was the best known of all the Tolbooths.

The Old Tolbooth of 1480 by 1555 "now consisted of an iron room, a thieves' hole, a jailer's house, and possibly one or two other rooms besides".³² By 1561-62 it had become so ruinous that the magistrates were ordered to demolish it. "The new tolbooth was erected on a site partly now covered by a portion of the Signet Library, and provided accommodation for the Lords of Session and the Town Council. A section of St. Giles' Cathedral was partitioned off and converted into a prison, municipal offices etc., and also went by the name of tolbooth".³³ Parliament and the Court of Session also met there and communication between the two buildings was by a covered passage. Thus there were three tolbooths at this time in Edinburgh; the Old Tolbooth was never wholly taken down. "The eastern and first prison-part, originally known as the Belhous, remained down to 1817 much as it existed previous to 1560, in which year it became wholly a prison, while the western portion was restored in 1610-11 and, undergoing repairs from time to time, also survived till 1817".³⁴

In Dundee, Robert I in 1325 had by royal charter granted permission to the people to build a Tolbooth with cells for prisoners in the Sea-Gait. "David II in 1359 gave a further grant of additional ground for an extension of this Tolbooth, as by that time the Castle of Dundee, which had been used for confining prisoners"³⁵ had vanished. This Tolbooth was abandoned in 1440, when a new one was

built facing the Nethergait and used for meetings of the Town Council and the Burgh Courts. But by 1550 this building was crumbling and unsafe, and yet another tolbooth rose on the site of the later Town House, incorporating the stones of the Franciscan monastery destroyed at the Reformation. This Tolbooth was used as a Council House and jail until 1730.

In Perth, the "old jail" stood at the foot of the High Street near the old bridge. It incorporated part of the ancient St. Mary's Chapel destroyed by the great flood of 1210 and rebuilt on the site. It is not known when it was converted into a prison, "but it was sufficiently gloomy for this purpose".³⁶ "The prison must have been originally very small for it was not until 1666 that the back or north division of it was erected".³⁷ In addition to the Tolbooth, use was made of the "Spey Tower", which was "a fortress upon the city wall, near to Earl Gowrie's Palace, and had in it a strong prison".³⁸

Since the tolbooths were often in disrepair, steeples in various Scottish towns were frequently used to imprison delinquents,³⁹ until they paid to be redeemed from ward. In most old prisons there were cages of strong wood and iron, to hold prisoners of special importance.⁴⁰ The earlier stone tolbooths followed the familiar tower-house pattern, the town bell in the upper part of the building. The late 16th century three-storeyed Tain Tolbooth is one of the very few surviving buildings of this class. Canongate Tolbooth is of the same period.⁴¹

Planned imprisonment did not come within the scheme of things. Our ancestors would have thought us crazed to imprison men - and clothe and feed them - for ten, twenty or thirty years. Rehabilitation is extremely costly and a luxury that relatively underdeveloped societies cannot afford. And originally the transgressor was a menace to be disposed of, incorrigible, an outcast. Those in authority had no time nor wish to try to transform him into a "useful member of society". Reform was a concept as yet unthought of. But although prison did not loom large in the early period, savage and brutal punishments did. The most barbarous tortures of all were inflicted on the hapless "witches" with the strong approval of the populace, and on political prisoners, usually by members of the royal family. For example, in 1437 the murderers of James I were put to death with the most inhuman and revolting cruelty, "perhaps the most appalling that is recorded in our country's history",⁴² being devised by the dead king's widow, his gentle "milk-white dove". The common forms of milder punishments were branding, mutilation, public whipping and banishment (which was vaguely "furth of Scotland", or simply and very popularly "to the next parish", where the neighbouring township could cope with the delinquent).

The constant stream of measures against beggars contain occasional references to imprisonment. By an Act of James I (1425) the sheriff was to "inquire diligently gif ony ydil men" with nothing to live on were at large. He had power

to arrest them and keep them in "festynance" while enquiries were made. If they were unable to find masters within 40 days the sheriff was to arrest them again "ande sende thaim to the kingis preson to byde ande be punyst at the kingis will".⁴³

In the 15th century there was still nothing that could be called a regular system of public prosecution, since the right to prosecute belonged to the injured person or relatives. Consequently when criminals were convicted they were apt to be allowed to escape punishment by compensating those they had injured (but not in cases of heresy, witchcraft or unnatural offences, where the offender could expect no mercy). Pitcairn's Trials illustrate in the reign of James IV the great number of crimes for which the accused person was permitted to compound by heavy fines.⁴⁴ These included slaughter, theft, "intercommuning with the English" (naturally always heavily frowned on, but surprisingly frequent), horse and cattle stealing, adultery. Fines were paid to the king; compensation to private parties was a matter of private negotiation. "Assythments and 'letters of slains', which were a device to prevent violent reprisals for wrongs already committed, were a 'familiar part of Scots Law'"⁴⁵ in the 16th century. If sureties were 'unfundin' then the accused were "hangit or drownit". For the poor with no sureties there was no possibility of compounding, only one end in forty days, even if guilty only of "pikry" or petty theft. But "Probably

banishment was more popular... because it was simpler, and also cheaper, than the penalty of death. Hanging an undesirable was a costly business with little or nothing to be gained in return by way of escheats or otherwise".⁴⁶ Imprisonment is mentioned only occasionally: in 1510, some 200 persons convicted of deforcing a King's messenger (at Selkirk) were to "be put in sure prisons for the space of a year and a day... and their lives to be at the King's will; and all their moveable goods to be escheated to the King".⁴⁷ In the same year, when John Dalglesse was tried for burning Braxham and Ancrum, intercommuning with the English, theft and common treason, he could not find sureties to satisfy the parties and judgement was given that he should be warded by the Sheriff forty days - and "if he could not find sureties... should be hanged".⁴⁸

The conclusion to be drawn seems to be that if the accused was very poor and unable to find surety, if he was without money or influence, then he paid dearly for his crime. If he had either money or influence or both he could expect to escape the harsher consequences.

In England the overall picture was different as the Crown kept a tight hold on the reins of government, and attempts to have heritable jurisdictions similar to those in Scotland were stamped out at an early date. But some aspects were alike. In early times in England, jails were small huts or cages inside the castle yard. State prisoners were kept inside the castle in close confinement,

"in profundo carcere", and in the 14th century such places began to be called dungeons or pits (compare the French "oubliette" which continued to swallow its victims till the Revolution). "In 1305-7 a wooden cage bound with iron was built for David ap Gruffydd's son, Owain, inside Bristol Castle".⁴⁹ As in Scotland, the power of the Crown to hold the King's personal or political enemies in prison for long periods was very widely used. By mid-13th century England, the term "prison" could be applied to a castle, a county jail maintained by a sheriff, a national prison (the Fleet 1222, and Newgate from the time of Henry III), or a franchise jail owned by the lords of a liberty, which included prisons owned by the Church and municipal or borough prisons. By Henry II's reign there were only five counties without jails -- a very different story from Scotland's. Far more buildings were used as prisons in the 14th and 15th centuries than now, and the sight of prisoners begging or being led to jail or execution was a common one. Probably most 15th century guildhalls had their cellar or attic prisons. By the 16th century prison seems to have been a natural part of every English town. All English prisons belonged to the King, for although a person or municipality might own the prison buildings, the institution remained *persona regis* from the time of Henry III, save those of the palatinates, Chester and Durham. The Crown's jail delivery prevented franchise owners from setting up private criminal jurisdictions and making their prison a base from which to terrorise their neighbours. As early as

1260, a landholder who hanged a thief in his own private prison was condemned. But later, the fact that, unlike Scotland, almost half the local prisons in the country were privately owned led to many abuses. Gaols had to be regularly cleared or "delivered" of their populations, "the normal system of delivery was by means of circuit justices".⁵⁰ In the early 14th century deliveries were very frequent. Later they became less so.⁵¹ In general the Crown opposed claims of lords of liberties to deliver their own gaols.⁵² The Statute 1352 gave a common creditor, like the Crown, the power of imprisoning the debtor until the debt was settled. This played a great part in the history of imprisonment in England, since from this statute came all the debtors' prisons.

As in Scotland, escapes were easy from English prisons, except from fortified castles, for a large number of medieval town prisons, like the Scottish ones, were very small, consisting of a single room in the keeper's dwelling. Many prisoners were destitute, and if they had no friends the law provided no remedy and many must have starved to death. Others survived precariously by means of public charity, for by the early 14th century many rich people left legacies for the "poor prisoners". They were allowed to beg in the streets, chained up outside the prisons. In 1383 in England, vagrants had to find surety for good behaviour or else go to jail till the next delivery. On the right side of the prison walls the great number of hungry beggars posed a problem in England as in Scotland.

CHAPTER II 1560-1747.

There was no shortage of crime in Scotland. The chronic disorder accounts for ~~the~~ "the great number of Acts of Parliaments against such common crimes as umbesetting of ways (waylaying), robbery, stouthrief, theft, rapt (rape, or, more often, kidnapping), hamesucken and violence of all kinds. The statutes were really nothing more than periodic appeals to the lieges, not to reset and assist criminals, but to help the authorities to bring them to justice".¹ The Bloody Roll of Perth lists the names of persons dwelling in Perth indicted for crimes punishable by death, committed in the period 1556-1580.² These include murder (on one occasion by drowning in the Tay), sedition and riots, witchcraft, importing false coin, mutilation.

It has been said that the general spirit of the law "will always, in some measure, be bent and accommodated to the temper and exigencies of the times; directing its severity against those crimes which the manners of the age breed a direct abhorrence of, or which the present condition of the people renders peculiarly hurtful, in their consequences to private or to public peace".³ In short, the attitude to crime will be directed by expediency. The protection by society of itself will be the greatest consideration. In the absence of an adequate centralised authority, and therefore of a unifying influence in the public attitude to crime, one would expect an ill-assorted record of arbitrary punishments attached to the normal types of crime, that

is those against which society feels itself obliged by experience to protect itself. The punishments will vary from one part of the country to another, depending on the peculiarities of the local fountain of justice, his vindictiveness, his degree of practical authority, his enlightenment. And thus penalties imposed and length of imprisonment given for crimes of different kinds will vary from place to place.

This is in fact the case in Scotland before the mid-16th century. With, however, the advent of the Reformation and the discipline exercised by the General Assembly and the Kirk Sessions, the pattern changes. The arbitrariness of punishments remains. But the catalogue of crimes expands, the emphasis placed on the peculiar atrocity of one offence rather than another shifts, and with it the severity of the punishment which attaches to it. The concern of Scotland was no longer primarily to protect itself from physical violence and proprietary insecurity, but to weed out from itself and to punish with disproportionate severity those numerous elements which fell short of the ways of God. In brief, the accent in the eyes of the criminal law was on morality and not on expediency. And whatever other moral systems may have expediency as their base, the morality of the Kirk Sessions did not. Thus the 16th and 17th century Scottish crime sheets illustrate the contemporary attitude which held the most pernicious crimes to be those against religion and morality. Throughout the

period public opinion was coloured by religious influences. While the general picture of the country remained apparently unchanged, in the lawlessness, ferocity and licence, and (which was the cause), lack of any powerful central authority, a new influence had in fact exploded upon the scene.

It is therefore impossible to understand the period and its attitude to crime except by reference to the power of the General Assembly and the Kirk Sessions. "They assumed and exercised the power of fining and imprisoning in the most capricious, unrelenting, and dogmatical manner dictating to the municipal authorities, and conducting themselves as if they were infallible. In many cases they made little distinction of punishment between gross offences and foolish eccentricities... The Presbyterian Kirk Sessions were truly formidable".⁴

Dictatorial, formidable, inquisitorial as the Kirk Sessions were, yet their efforts had an important effect on public order. "The most important curb on outbreaks of violence may have been provided not by any of the older courts, still less by the new justices, but by the Kirk Sessions, which had existed here and there since 1560 but which first became generally effective in the early 17th century... It may well be that one important factor in the reducing of Scotland to order was the persistent work of the Kirk Sessions in the parishes up and down the country. The Kirk Session was apt to be closely linked with the secular magistracy in the burghs..."⁵

The "crimes" of fornication, adultery, blasphemy, sabbath-breaking, slanderous language, drunkenness, "horrid" swearing, witchcraft and unnatural offences all figure largely in the Kirk Session records. What concerns us is the use made by the Sessions of periods of imprisonment as penalties, in a way hardly known before. For this they had statutory authority. After the abolition of Popery by Parliament in 1560, "one of the first acts of the legislature was to annex a punishment to the 'filthie vice of fornication'".⁶ The punishment for a first offence was a fine of 40 pounds Scots, and on failure to pay, eight days in prison on bread and water and two hours in the pillory. For a second offence the fine was 100 merks, and a shaven head. For a third offence 100 pounds Scots and to be ducked thrice "in the deepest and foulest pool in the parish"⁷ and to be banished therefrom for ever.

Thus at Perth in 1582, a woman, after confessing her fornication, was put "in the ward of the fornicators, above the North Kirk door".⁸ And the same year, the Perth Session ordained John Ronaldson, "having" (in custody) "fornicators, to put every one of them in ane sundry house in time coming, to give them but bread and small drink; to let none of them come to the nether window and when they come to the Cross Head, that they be fast locked in the irons two hours",⁹ under pain of loss of his office. In 1579, a man for the "filthie cryme of adultrie...hes bene keipit straitlie in ward within the tolbuith of Edinburgh be the space of sextene oulkis bigane and mair".¹⁰

In 1622 a woman adulterer, "having no money to redeem her from ward, or the cross Head, was committed to the Tower".¹¹ But in 1619, "For as meikle as William Marshall, an auld doytied man, has confessed his adultery with Janet Ramsay, and because that his compearance publickly in sack cloth at the Kirk door and repentance stool, would be an reproach to the town" (perhaps on the theory that grey hairs should not be ridiculed)" therefore it is thought expedient that he be put in ward and detained therein, ay and while he willingly consent to be banished this town for ever".¹² These adulterous offenders could count themselves fortunate, for there are cases of those guilty of "adulterous commerce" being hanged (1627).¹³

But prison was not the only penalty used. In 1585 a Perth man, for fornication with three women, was ordered to be "warded, shaven and doukit".¹⁴ Also in 1585, a couple for "filthy fornication" were ordained to be "carted backward through the town... having paper hats on their heads... and thereafter that they be locked fast in the front on the Cross Road... and thereafter to be warded till Sunday when, still wearing their paper hats they had to sit upon the stool of repentance".¹⁵

The Kirk Session records of Perth have numerous references to warding for various offences. In 1581 "Maige Mertayne being put in the tower above the north kirk door, for concealing and hiding of the truth" about a couple accused of adultery.¹⁶ In 1589 "The minister and elders gave licence to play the play" (probably St. Obert's play) "with

condition that neither swearing, banning, nor no scurrility be in it", and if it is, whoever guilty will be "warded and make his public repentance".¹⁷

Sometimes zealous elders would find backsliders drinking on the Sabbath, as in 1612 when Isabell Murdoch, found "drinking with an Highland man in time of preaching" was committed to ward.¹⁸ In 1611 a deacon of the kirk called to answer his wife's "dicing and drinking" in his house on Sabbath while he was in the Kirk, refused to present his wife to the Session and was therefore put in ward, "there to remain while he should be better humbled".¹⁹ In 1621 John Hynde accused of "uttering of disdainful speech" against the minster, tried to excuse himself by answering that "in his rough humour after drink he spoke it", but was committed to ward.²⁰

Whether or not convicted persons were imprisoned seems sometimes to have depended on whether or not they could afford to maintain themselves in prison. In 1602 a couple admitted fornication and the Session "understanding that they are both poor bodies, having nothing either to pay in penalty, or to entertain themselves in ward... therefore ordains them to be put in ward, while Saturday, on their expences". After that, the unfortunates were to be "carted about the town together, and thereafter to be banished".²¹

Although the Kirk thundered mightily against fornicators, yet when the plague struck Perth in 1585 "the haill Assembly and Session of the Kirk agrees in one voice, that so many fornicators who have not satisfied the Kirk for their offence

hitherto, and are rather willing to pay an permulctuary sum of money... shall instantly deliver the same... to support the poor, with all that are putt in the lodges" (pest houses).²²

Sabbath-breaking, drunkenness and swearing were usually lumped together and punished by fines and repentance on the stool in the Kirk before the congregation, or by jail for a few hours. In 1586, for example, it was declared that unmarried sisters were not to live together but to go out to service "under the pain of warding their persons and banishment of the town".²³

The hunting of witches was a popular pastime all through this period, and the records of the Privy Council are full of commissions to take account of witches--fourteen separate commissions at one sederunt. "Our ancestors were not alone in their belief in witchcraft; they were warranted in that opinion by the law and custom of all the nations of Europe".²⁶ They harked back to Exodus 22.18, "Thou shalt not suffer a witch to live", and to Roman Law, which condemned sorcerers to die by fire. An Act in 1563 made the practice of witchcraft or consulting with witches a capital crime. "Na maner of persoun nor persounis of quhatsumeuer degre or condition thay be", *would be suffered to practise witchcraft nor claim knowledge of it (nor might anyone consult such people) except* *under "pane of deid"*.²⁷ But there are many cases where witches suffered imprisonment while awaiting trial. Thus in Perth, 1582, "Ordains James Sym to give the witch in the tolbooth 8 doits in the day".²⁸ And in 1597, again in

Perth, "The Session ordains the magistrates to travel with his Majesty to obtain a commission to execute James Robertson, sorcerer, who long had been detained in ward".²⁹

Therefore for witches prison was very often a step to death. They were frequently kept in prison for lengthy periods and were tortured with diabolic cruelty until they confessed their "crimes" before the Session, death being the almost inevitable result. Those accused of witchcraft had small hope of acquittal. The relentless hounding of unfortunate women was to continue throughout the seventeenth century. At Perth in 1623, a woman is "committed to ward in the Tower till she be tried anent sorcery"³⁰ In 1649, three women were condemned and executed on the same day, followed by several more a few days later.³¹ The function of imprisonment in these cases was custodial only, however long the confinement might last; and once tried and convicted, execution followed swiftly. Chambers cites cases in 1662 of witches dying in jail of cold and starvation, and of others being kept there for 40 weeks although nothing could be brought against them.³² These the Privy Council freed. In 1667, it was noted that a woman had been in ward in different prisons for three years under the charge of witchcraft "haveing been most unjustlie apprehended and imprisoned in severall prissins, viz, off Dumblain, Edinburgh and Stirling, be the space of these three yeirs last bypast for the alleadged cryme of witchcraft".³³

Much energy was displayed by the Kirk Sessions in hunting out old women charged with witchcraft and young

women suspected of infanticide, but imprisonment was not a penalty usually imposed. In the first four months of 1681, ten women were hanged in Edinburgh for murdering their illegitimate babies. Often the crime was committed through fear of the ignominy of the Church stool of repentance. The Duke of York was disturbed by the practice and declared that the custom was used in no other Christian country; he urged the substitution of fine or corporal punishment, but to no effect.³⁴

As in the earlier period, summary justice was swift, both in the heritable jurisdictions and where the King's writ ran. The object of captors continued to be the disposal of the wrongdoer as quickly and cheaply as possible (although in this period as in earlier ones each baron could exercise in his court only the jurisdiction which he was strong enough to enforce). Thus the Regent Morton in 1581, tried for his part in Darnley's murder, was executed the next day.³⁵ The Earl of Gowrie, tried at Stirling for treason by a jury of his peers in 1584, was found guilty and beheaded "that same evening".³⁶ And in 1689 the murderer of the President of the Court of Session was hanged three days after sentence.³⁷ Execution could be a costly process, and a letter to the Provost of Perth on behalf of the Duke of Athole in 1719 illustrates this.³⁸

Great lords continued to dispense their own peculiar brand of justice. In 1578 Lord Maxwell put the "complinar in prissoun in the place of Carlaverok" for 10 days, and then tied him to a tree nearby and "tuke ane small cord and band

about his heid and threw the same about with ane pin quhill his ene lap out upoun his cheikis" and was then returned to prison. Maxwell was ordered to release the prisoner or to be put to the horn.³⁹ Ross of Balnagowin in 1580 seized prisoners and detained "thame in ward in irnis tormenting thame maist cruellie".⁴⁰ In 1613 Alexander Morton complained that Kennedy of Crugilton seized him and imprisoned him in the castle of Crugilton and "committit him to strait prisone within the pit of the same" and kept him there "in grite miserie". As the pursuer appeared personally and the defender did not, the Lords ordered the defender to be denounced rebel.⁴¹ In 1619 a complainer says that Sir George Elphinston of Blythwood, a J.P., imprisoned him "in his pit or thevis hoill of Gorbellis" and struck him in the face. The Lords found that the pursuer was justly committed to ward, but that Sir George, in striking his prisoner's face, committed "a grite oversicht and neglect of dewtie in the execution of his chairge and office", and ordered him to "remane and keip waird within the burgh of Edinburgh"⁴² until relieved.

It will be seen that in the treatment of the crimes discussed above, prison does not loom large save in the case of witches and fornicators. Possibly because of the chronic insecurity of prisons, imprisonment could never really be considered as a practicable punishment. There is no consistent pattern in the developing concept of prison as a penalty as distinct from its custodial function, perhaps partly because the central authority was more

effective in some places than in others. One may speculate that in small remote communities where the royal writ did not run effectively, the poverty-stricken inhabitants would regard the building of a strong prison and the expense of a jailer as a luxury quite beyond their means. There were cheaper and more satisfactory ways of disposing of malefactors. In the country districts it was probably only in the gloomy pits of the feudal barons that prisoners were kept for any length of time. In the larger towns like Edinburgh and Glasgow the royal authority or the burgh authority might be conscious of the advantages of a strong prison building from the point of view of law and order, and its staffing and maintenance would not press so heavily on a more prosperous community.

Prison during the period under review was then still largely custodial, although the length of one's stay might vary, dependent on one's money, influence or friends. If he had none of these a prisoner could languish for months or years.⁴³ For the prosecution could imprison a person and then delay or not bother to do anything. The Justiciary records are full, from 1660 on, of petitions to the court by persons for release from prison. In the other courts prison was almost entirely custodial, pending payment of a fine, or trial, or King's will, finding assythement or caution. Certain classes of offenders could find themselves left in prison for a very long time. These were political offenders, religious dissenters, debtors and those accused

of witchcraft.⁴⁴ In the case of those accused of political offences the authorities often tended to procrastinate, either from inertia or from a reluctance to embark on complicated investigations or proceedings which might have controversial results. It was often easier quietly to forget about such prisoners and hope that they might rot away and the problem thus solve itself. In some cases the unfortunates really were forgotten. A mere prisoner could easily be overlooked, and without a Habeas Corpus procedure he had certainly no effective means of reminding the authorities of his existence as petitions were frequently ignored. "The criminal law of Scotland has never been as well defined or enlightened as the civil law. Unlike the law of England it showed scant regard for the liberties of the subject. Habeas Corpus, or any equivalent procedure, was unknown in Scotland, ... and an Act of 1701 against wrongous imprisonment was so qualified as to be almost worthless".⁴⁵

For example, the notorious Sir James Macdonald, who had been a prisoner in Edinburgh Castle since 1604, and under sentence of death there since 1609, for a career of wild crime and adventure dating back to 1587, eventually escaped in 1615.⁴⁶ Similarly, Patrick Stewart, Earl of Orkney, was imprisoned from 1609 to 1615, when he was executed.⁴⁷ At a lower social level, one William Drew in 1666 petitioned for trial or liberation after five years in a Glasgow jail on a charge of murder.⁴⁸ In the same year a poor woman who had lain "in Forfar jail on suspicion of witchcraft for several

years" without trial, appealed to the Privy Council, who quite often freed sickly persons, and who now ordered her liberation unless she could be tried at once.⁴⁹ A group of Quakers were imprisoned under stringent conditions, one for over four years (1666-70).⁵⁰ From the execution of Argyll in 1685 "to the death of Renwick in 1688 the Old and Canongate Tolbooths accommodated many of the Covenanters".⁵¹

Like witches, political prisoners and religious dissenters, debtors or dyvours could be imprisoned for long periods and were scourged or put in the stocks. By several Acts between 1606 and 1688 debtors, on release, were ordered to wear distinctive clothes, "ane hat or bonnet of yellow colour", and in the case of bankrupts a coat half yellow, half brown.⁵² In prison they were allowed no fresh air or exercise.

Various means were used to thin out the number of prisoners in jail. Firstly, transportation, a mode of disposal started by James VI, was continued with the double purpose of draining off the ever present multitude of wandering beggars and relieving the pressure on the jails. In 1654, 16 soldiers of "the insurgent army of the Earl of Glencairn were taken from the Old and Canongate Tolbooths, and shipped to Barbadoes to be sold as slaves".⁵³ In 1666 an Edinburgh merchant was authorised by the Privy Council to transport to the Barbadoes sundry "vagabonds and idle persons", prisoners in Edinburgh, "content to gae of their oun accord".⁵⁴ Secondly, men could escape death or prison for theft by being bound in perpetual servitude in the mines

or as servants to great lords. Thus at Perth in 1701, four prisoners within the Tolbooth there, who lay under sentence of death, found that the Commissioners of Justiciary "changed their punishment of death to Perpetual Servitude; and ... the said pannells are at the Court's disposal". One of the four was given to the Earl of Tullibardine, "recommending to his Lordship to cause provide an collar of brass, iron, or copper, which, by his sentence or doom ... is to be upon his neck, with this inscription, "Donald M'Donald, found guilty of Death for Theft, at Perth, Dec. 5th 1701, and gifted as a Perpetual Servant to John, Earl of Tullibardine".⁵⁵ Thirdly, from 1621 until the end of the seventeenth century all able-bodied males were at the risk of being forced into the army. Recruiting officers searched the prisons for likely lads. Prisoners in Edinburgh Tolbooth for the capital offence of maiming cattle, "the barbarous hoiching and gorring of certane horsse and oxin, quhilk being a cryme capitall", found their sentences commuted into transportation to Flanders for service in the Scottish levies. They were "to be transportit to the wearis" never to return under pain of death without the King's licence.⁵⁶ "Idle rogues" had no right of appeal, but those with a trade could appeal to the Court of Session. In 1692 a great number of recruits for Flanders awaited transport, so the Privy Council ordered their redistribution throughout the jails of Lothian and Fife; 244 were sent to those of Musselburgh, Haddington and Fife, so swelling the prison population that escapes were made easier. The

recruits were very unruly and the keeper of the Canongate Tolbooth found their presence too much, especially as he was liable to pay for every escape.⁵⁷

What of the conditions in the prisons? Wretched though they were in Scotland, they were certainly no worse than in England. Life was miserable except in a few small county jails where the prisoners were allowed out if they promised to return. If they had money they could buy food and drink and could carouse with the jailers. There was frequently no proper supervision. At Pittenweem in 1601 a female was in ward in the tolbooth, guarded by officers, but two nights later her rebel husband and sons burst in and freed her, leaving officers in the stocks!⁵⁸ In 1626 a burgess of Crail had to answer for taking "the keys of the door of the tolbooth of Carraill" from the officer and putting "certain persons as prisoners therein".⁵⁹ In 1628 there are complaints of lax security and too kind treatment in prison when two women thieves in Canongate Tolbooth "ar fed and intertenneit with wyn, tent wyn, seck and maist delicious fair ... and are let at libertie at thair pleasour by collusioun of the jewillir". The request is made that the women be handed over to Edinburgh Tolbooth where "thair is sure and straitt waird for sic persones".⁶⁰

The problem of the maintenance of prisoners was especially acute in the case of beggars, who by definition could not have the means to pay for their upkeep. The Act of 1579 for punishment of "strong and idle beggaris" ordered that "nane salbe thoilit to beg" between the ages of 14 and

70 years unless allowed to carry tokens. Any breakers of this law were to "be comittit in waird in the comoun presoun" until tried. The Act went on to make provision for poor prisoners, in the expectation that the prisons might become filled with a continually renewed supply of beggars. The "comoun presonis, Irnis and stokkis of touns and burghs ar like to be fillit with a greitair noumer of presoners nor of befoir hes bene accustumat -- sua the presoners ar like to perishe in default of sustenance". So it was ordered that their expenses were to be paid by the parish where they were apprehended, "allowand to ilk persone daylie ane pund of aitbreid and watter to drink".⁶¹ Before this Act the burden of maintaining poor prisoners before trial was the Crown's responsibility, but that was now shifted to the parishes. The subject of the maintenance of poor prisoners appears in the Privy Council records in 1611 "becaus thair be a grite many of prisounaris" who having no means of maintenance "will utherwayis starve and famishe befoir thay can come to thair tryall", therefore they were to be supported by each parish on a weekly rate no less than a shilling and "not exceid the soume of fyve shillingis Scottis money at the maist".⁶² In 1613 a prisoner appealed for aliment in the tolbooth of Edinburgh from the Earl of Lothian, and from Inglis, a burgess of Edinburgh, by whom he had been "wairdit" for three-quarters of a year, "haveing nathing to leive upoun, but is lyke to perrishe for fault". The Lords ordered the defenders to pay the

pursuer five shillings daily.⁶³ In 1614 a "jaylor of the Tolbuithe" of Edinburgh says "divers poore miserable personis ar committit to warde" there, paupers "sua that the burdyne of thair interteynment lyis upoun him, to his grite hurte and wrak". So the Lords of the Privy Council undertook if "such poore creaturis" are in ward by their direction, to pay each^{the} "soume of fyve shillingis daylie, to be payit to thame be the Thesaurair Depute of this Kingdome".⁶⁴ "No direct provision was made by law for the alimnt of destitute prisoners after conviction until well on in the 19th century".⁶⁵

Measures were taken for the more effective execution of this Act in 1588. All wandering beggars were to return to the parishes where they were born and if found wandering to be "kepit in prisone or stokkis, scourgeit, or brynt throw the earis with hett irnis".⁶⁶ And all "jugeis ordinare" and others commissioned are "to prepair commoun prisonis, stokkis or irnis within there jurisdictionis" for the keeping⁶⁷ of contraveners of the 1579 Act. Responsibility for prisons was, however, soon to be put specifically on the burghs. An Act of 1597 that "Prison-houses suld be begged within all Burroues" stated, "understanding that throw want of sufficient and sure prisonis iailles and ward housses sindrie rebellis and transgressouris of the Lawis als weill criminall as ciuill eschaipis unpunischit", therefore it is "ordanit that within be space of thre zeiris in all burghs within this Realme thair be sufficient and sure iailles and ward houses begged uphaldin and mantenit"⁶⁸ by the Burghs.

However, already before 1597 some burghs had conscientiously endeavoured to build prisons. Thus in 1572 the Bailies and Counsall of Musselburgh intend to build adjacent to their tolbooth "ane hous to have for thair counsalhaus, a warding place and a place of pressoun for keping of malefactouris".⁶⁹ In 1579 there is a petition from Dumfries magistrates regarding the rebuilding of Dumfries prison, "for the mair suir keping of prissoneris that salbe committit to ward thairin in tyme cuming", and they think that the secuest bit of the general prison would be in the middle or upper part of the building, to stop the possibility of prisoners escaping by "werk under the wall and undermyne the samyn and sa eschaip".⁷⁰

From 1597 till the Act 2 & 3 Vict.c.42 it had been held as established law in Scotland that burghs are bound to receive prisoners under a warrant granted by the persons authorised to commit in the county in which the prison is. Obligation to provide prisons being thrown entirely on the burghs by the foregoing Act, responsibility for maintenance became a necessary consequence.⁷¹ Yet Acts of Parliament requiring magistrates to build tolbooths were often ignored. "So late as 1620 there were none in ... Ross, Sutherland or Caithness".⁷²

Tolbooths, when they were built, were often ramshackle affairs from which escape was ludicrously simple. Thus in 1590, because "the hous of justice uthirwayes callit the tolbuith of the Cannogait, is altogidder becum ruynous, decayit and fallin down", and so insufficient "warde for

keeping of malefactouris, quha being wardit hithertillis in sic houssis as micht be had for the tyme, hes oftymes, be ressoun of the insufficiencie of the same houssis, fred thameselffis furth thairof, and swa eshaiped punishment".⁷³ For this reason tax was to be levied on all inhabitants of the burgh of Canongate and Regality of Broughton to build a new tolbooth.

Despite iron bars and shackles for desperate inmates escapes continued. The law held the magistrates responsible and liable to imprisonment; for example in 1612 when an untried prisoner escaped from Brechin Tolbooth the magistrates were summoned and imprisoned. A Caithness man in debt for the large sum of £1400 was in 1700 lodged in Tain prison, from where he escaped in 1702, "taking advantage of the insecure state of the prison". His escape made the Tain magistrates liable for his debt, so they pursued and caught the fugitive. He was cast into the vault of the steeple of Inverness, which was evidently more secure than Tain. He was still there in 1709, when he petitioned the Inverness magistrates with the complaint that he was living "with grytest severity ... and affliction ... not haveing the use or benefit of the least fyre, or little candlelight allowed me, ... tho' ever so seike or unweile. The said vault being so cold and obnoxious to the health ... that it is a wonder ... that a person of my aidge heth continued alyve so long in it ..." Rain does run down in it, "and when there are dry snow and wind it will cover whyte the floure and the bed and bed cloathes".

He goes on to plead that his privations have brought on several dangerous distempers and he "may dye heir like ane beast". He begs to go to the Tolbooth where he may have the "use of an fyre and administration of some doctor".⁷⁴ So in 1709 he was removed to the inner Tolbooth, but as the Town Council were at the time burning great quantities of peat in it to counteract the evil effects of the frightful insanitary conditions⁷⁵ poor Rutter was probably no better off.

The county jail of Inverness had two small cells, one for criminals and one for debtors. A vault of the old stone bridge over the Ness, erected in 1685, was also used as a prison, being thought more secure than the "frail tolbooth". The bridge vault was a fearsome place, twelve feet square. Entrance to it was by a hatch in the roadway of the bridge and the wretched prisoner derived all his air and light from an iron grating in the upper pier. In this dismal den, sometimes waist-deep in water, half-devoured by rats, the prisoner languished. So great was the impression made by the harrowing tales about this hole, that the Inverness people christened it the Fala Dubh or Black Hole.⁷⁶

In many towns -- Edinburgh, Perth, Dundee, Inverness -- the steeples of the parish churches continued to serve as prisons, being regarded as more secure.⁷⁷ St. Giles' was so used until complaints were lodged that the prisoners dropped pebbles on the heads of the congregation. The general insecurity of Scottish prisons is illustrated by an instance in 1682 when the magistrates of Dumfries were

forced to have a man, charged with murder, removed to Edinburgh because several Border friends "daily threatened to force the prison", and the magistrates were put to great charges to guard him.⁷⁸ And in 1689, when a destitute mother who had drowned her infant was apprehended and imprisoned in Peebles prison, the magistrates were "necessitate to cause persons constantly to guard the murderer, the prison not being strong enough to secure her".⁷⁹ She was sent, under guard, to be lodged more securely in Leith Tolbooth for the next three years until her trial and execution.

In 1690 the Privy Council was anxious about the security of the Edinburgh Tolbooth because escapes had taken place from the Canongate jail. Thus it decreed that "close prisoners should be confined within the inner rooms; that the shutters towards the North should be nightly locked, to prevent communications with houses in that direction" and a "centinel" should stand all day at the head of the iron stair.⁸⁰

Gradually the primitive tower-like tolbooths were replaced, or if remaining in use (like Craill) they were remodelled and enlarged in the 17th century, most of them having three storeys and a steeple.⁸¹ During the second half of the 17th century, more formally designed buildings came into vogue, with three storeys and tall square towers (Linlithgow, Culross). Stirling's new Town House (1702), designed by Sir William Bruce, had three storeys and a six-storeyed spire, the prison there being the "holl beneath

the steeple". Dumfries Town House (the Midsteeple) closely followed Bruce's design a little later. The Georgian tolbooths (Sanquhar, Kintore) consist of plain two-storeyed rectangular blocks with ridge-belfries, while Peebles Town House has no steeple or belfry.⁸²

Political prisoners and religious dissenters, those whom the King regarded as serious threats to him, were thrown into the State Prisons. These, often the King's Castles, posed the biggest problem for prisoners trying to escape, but even they varied greatly in their strength. Edinburgh, Stirling, Falkland, Doune, Dunnottar, Blackness were far more secure than the town tolbooths, while the Bass Rock, a natural island stronghold, was the most impregnable.

Robert Lauder built the Castle on the Bass in the 14th century. The English tried to seize it in vain. By 1405 the bleak and rugged Bass was fortified and the first state prisoner was Walter Stewart, son of the Duke of Albany. A Frenchman visiting the Bass in 1548 found a garrison of above a hundred men. The only means of egress from the Fort to the boat was a basket. "Old prints of the Bass in a fortified state during the 17th century show the Rock ascending steeply from the sea to a level platform. A crane used for raising provisions, ammunition and boats, stood on the platform. Behind was the governor's house and the towers connected by curtain walls. The prisons were situated in the centre of the enclosure. Only the roof and chimneys were visible from the exterior, thus

shutting off the prisons from any possible signalling with the outer world".⁸³ From 1676 the imprisonment of covenanters became more rigorous, and the state prison on the Bass "was deemed a fitting place of incarceration for the most persistent of the field preachers". These included Robert Gillespie and Alexander Peden, imprisoned there in 1673-74, and the number of prisoners from the ranks of Conventiclers increased in 1676 to ⁸⁴.77. The Bass was a prison of hideous discomfort and to add to the prisoners' privations they endured bad and insufficient food as often it was too difficult for boats to land in stormy weather. "The prisoners were severely kept, not being always allowed to take exercise. John Blackadder, minister of Troqueer in Galloway, one of the most noticeable of the Martyrs of the Bass, endured a captivity of five years and died on the Bass".⁸⁵

After the landing of William of Orange, the state fortress of the Bass was the last place in Scotland to hold out for the Stuarts. A few daring young Jacobite officers led the life of pirates, plundering passing ships for supplies, craning their boats up the face of the Rock, resisting all attempts to dislodge them. A London broadsheet of 1694 gives the "Welcome Advice that the Rebels in the Island and Castle of Bass had actually surrendered that Impregnable Place after having been in Possession of it above Four Years, and from time to time supplied with Provision, Necessaries and Ammunition from France, the French King taking great Cognizance of this place, as

designing to make it a Receptacle for Spies, Engineers and Incendiaries" and declared that great quantities of Arms were to be stored for future Jacobite attempts to restore King James. The rebels sent to the Government Articles on which they would surrender the Bass, and all seven Articles were accepted including that a "sum of 200¹sterling might be paid them to enable them to subsist when out of the Place, and that all those who aided and abetted them to be pardoned, and all rebels to go free".⁸⁶

Blackness, the castle built like a ship, and Dunnottar were to share in the incarceration of the Covenanters. The discomfort and misery endured by the State prisoners was intense. Blackness had been a State prison for many years. There Cardinal Beaton had been warded before going to his own castle of St. Andrews in 1543. In 1579 Lord Hay of Yester promised that "he will enter himself in ward in Blaknes Castle... under pain of 10,000 merks",⁸⁷ and again in 1584-85, the Earl of Morton was charged "under pain of treason" to enter in ward in the Castle of Blaknes for not appearing before the Council as committed, on various charges.⁸⁸ Dissenting ministers were imprisoned there (1681) e.g. James Fraser of Brae.⁸⁹

Conventiclers were frequently detained for long periods without trial, although they could obtain release if they gave bonds of caution not to attend conventicles. Finding surety against breaking this bond was difficult for the very poor, "but refusal to take the bond, rather than failure to find caution, appears to have lain behind

most extended confinements".⁹⁰ It should be remembered too that "the coercion used against those 'solemn-leaguers' was no more severe than the coercion which they themselves would have applied had they been in power".⁹¹

After the defeat of the Pentland Rising and the Battle of Rullion Green in 1666, 80 covenanting prisoners were taken, many put in the "Haddo's Hole" part of St. Giles', while those of higher ranks were thrust into the Tolbooth. At their trial, 10 were condemned to death by hanging, the sentence being carried out two days later. More executions followed in succeeding weeks.⁹² A bond of peace was offered to the others, transportation to Barbadoes and Virginia being the penalty for refusal (1668). 218 agreed and many were freed from prison.⁹³ From 1678 transportation to the plantations of the East Indies and Virginia "now became a recognised means of dealing with Conventiclers whereas previously this punishment had been used but sparingly".⁹⁴

After Bothwell Brig (1679) over 1400 prisoners were taken to Edinburgh, but these "suffered far less than has sometimes been asserted. The confinement of the majority in huts in a vacant walled-in part of what became Greyfriars' Churchyard might almost be considered a better fate than imprisonment in conventional insanitary and overcrowded prisons".⁹⁵ The majority were imprisoned during the summer only, and lack of adequate security allowed quite a number to escape. The huge number of prisoners posed a problem, and transportation of some 300 or 400 was to be the solution, but, save two field preachers, all

prisoners were offered their liberty if they promised never to rebel again. By August a start had been made to free the prisoners, but 400 refused, although 100 gave in later. In November 258 sailed for Barbados but were wrecked off Orkney and all but 30 to 36 drowned.⁹⁶

"If, in many cases, transportation was seen as the final solution for obdurate presbyterians, it nevertheless took time to effect. In the meantime the prisons grew more crowded, and it was in order to relieve this problem that the Council resolved to utilize Dunnottar Castle as a State prison",⁹⁷ and in May 1685 over 150 prisoners taken up for acts of recusancy "were gathered out of the prisons, driven off like a flock of sheep to the east side of the island, and huddled into a vault of Dunnottar Castle, where they lived for a few weeks in circumstances of privation, as to food, air, water, and general accommodation, truly piteous".⁹⁸ Many of them were later transported. For on refusing to take the oath of allegiance, nearly 100 men and women were banished and "gifted" to Scott of Pitlochrie for settlement in his colony of East New Jersey. They sailed from Leith in September 1685, 70 of them dying on the voyage.⁹⁹

The Revolution brought another party to power but it was as ready as its predecessor to lock up dissidents. One of the first Acts of the government of William III was for the securing of suspect persons. All through the summer of 1689 the Register of the Privy Council is crammed with petitions from a multitude of political prisoners,

calling for relief from the miseries of Edinburgh Tolbooth, Stirling Castle or Blackness, where they were locked up often with no cause given.¹⁰⁰ "The numbers in the Edinburgh Tolbooth were particularly great, ... their being packed in it much like the inmates of an emigrant ship".¹⁰¹ Some were moved to private lodgings on giving their parole, but many were still in prison years later. In 1691, "scores of state prisoners in Edinburgh, Blackness, Stirling, and the Bass, were starving for want of the common necessities of life".¹⁰² Men alleged to be Popish priests lay in Blackness and Edinburgh Tolbooth for years, and in 1693 were freed on caution of their promise to accept banishment.¹⁰³

At a lower level the penalty of banishment was as popular as ever. At the Baron Court of Balnakeilly we read that at Mouline in 1741 Isabelle Scott, accused of house-breaking and stealing 4/- sterling and meal and two cheeses which were found in her possession "save for one cheese which she had eaten", had to make restitution. She was fined 20 pounds Scots, put in the choggs (stocks), and "thereafter furthwith to betake herself furth of the ground of Balnakeilly, not to be seen therein for the space of three years hereafter..." and further "ordains her Mother and others in the grounds of Ballnakililie, under the pain of ten pounds Scots, toties quoties, not to lodge or harbour her by night or day in their houses or by giving her any manner of entertainment and victualls at any time".¹⁰⁴ The realistic, down-to-earth pattern

continues; let the offender go away and be a nuisance to some other parish, anywhere, so long as his own parish is no longer inconvenienced. This continual shifting of the population due to the numerous sentences of banishment contributed to the plentiful flocks of beggars which so troubled the country and whose ranks were swelled by the "dear years" of King William.¹⁰⁵ Until the middle of the eighteenth century the bad state of the roads even in the Lowlands kept people from travelling unless compelled. "Thus the burghs and villages were largely isolated communities, self-interested and practically self-supporting, with wide differences in manners and customs".¹⁰⁶

The foregoing concerns principally the Lowlands of Scotland. It should be remembered that Scotland was a two-nation country, a clear-cut division separating the Highlands from the Lowlands. There were no roads in the Highlands until Wade built them.

Life ran on very much the same lines during the first half of the eighteenth century, so Edward Burt, a young road surveyor who accompanied Wade on his road-making, found in the Highlands in 1726 that the "heritable power of pit and gallows, as they call it, which still is exercised by some within their proper district, is, I think, too much for any particular subject to be entrusted withal".¹⁰⁷ He found also, when in Inverness, that most of the murderers and other "notorious villains" in the Tolbooth during his stay escaped, and in his opinion, "this has manifestly proceeded from the furtherance or connivance of the keepers".

The excuse was "the prison is a weak old building and the town is not in condition to keep it in repair; but, for my own part, I cannot help concluding, from many circumstances, that the greater part of these escapes have been the consequence, either of clan-interest or clannish terror. As for example, if one of the magistrates were a Cameron (for the purpose), the criminal (Cameron) must not suffer if the clan be desirous he should be saved".¹⁰⁸

The Jacobite rebellions brought a spate of imprisonment, but it was nearly always custodial, in the old tradition. The defeated Jacobites of the 'Fifteen Rebellion were more fortunate in the treatment they received in prison than their successors in the 'Forty-five. Those Jacobites taken prisoner in Scotland fared better than those captured in England. Immediately after their defeat at Preston, several Jacobite prisoners were tried by drum-head court-martial, condemned and shot. The rest of the Jacobite leaders were marched south, and after being paraded through London with their arms tied behind their backs, were imprisoned in various London jails. Many death sentences were passed at the trials, but only two executions were carried out -- on the Earl of Derwentwater and Viscount Kenmure, for the Earls of Nithsdale and Winton, and several others escaped from jail.

The Jacobites captured in Scotland were imprisoned in Edinburgh to await trial, but there was such widespread sympathy for them that the Government feared that if they were tried in Scotland no jury would bring in a verdict of

guilty. Therefore in 1716, "By virtue of the treason-law for Scotland, passed immediately after the Union, the government this day suddenly removed 89 rebel prisoners from Edinburgh to Carlisle, to be there tried by English juries, it being presumed that there was no chance of impartiality in Scotland".¹⁰⁹ This aroused fury among all classes as being proof of enslavement of Scotland. But in strong contrast to the sufferings of the Jacobite prisoners after the 'Forty-five, they were well treated, received fair trials, and though a number of death sentences were passed none were carried out, although some prisoners were transported as in the later Rebellion. The introduction to the Balnakeilly Court Book makes reference to the numbers of Athollmen captured in England at Preston and transported for seven years slavery in the American plantations, "from which many a poor fellow was destined never to return, or if they did so, were mere wrecks of their former selves".¹¹⁰ In 1717 an Act of Grace and Pardon was passed, by which those Jacobites still in prison were allowed to settle at home or abroad.

During the 'Forty-five Doune Castle was used as a prison by the Jacobites and among the 150 imprisoned there was the playwright John Home, author of Douglas, who with several companions escaped from the Castle by dropping 60 feet.¹¹¹

Before and after Culloden the prisons were filled with Jacobites. "The combing out of the Scottish prisons in the summer of 1746 ... resulted in the dispatch of the more

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important prisoners to Carlisle", some 270 of them. "It is practically impossible to arrive at the number of prisoners in the Scottish prisons on any particular date. Although the returns were intended to be submitted monthly, this was either not carried out, or only some of them have been preserved ... Including suspected persons detailed for short periods, the total number in the Scottish prisons at different times (excluding Inverness) cannot have been less than about a 1000"¹¹³. Inverness was directly under the British military authority, and the 1200 Jacobite prisoners there, many of them wounded, were accorded special treatment. Cumberland "never had any intention of treating his captives as prisoners of war, but rather as persons already proved guilty of high treason"¹¹⁴.

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In Aberdeen prison by May 1746 there were 50 Jacobites. Some were confined in Blackness by the end of 1745, many at Edinburgh Castle in 1746, and to Edinburgh Tolbooth large numbers were sent "causing great overcrowding" and much illness, the numbers by May 1746 having risen to 120.¹¹⁶ The Canongate prison "was largely used as an overflow prison to which other prisons sent their surplus inmates. It had only 8 prisoners in January 1746, and was not very full until August 1746 when there were 280"¹¹⁷. At Perth during 1746, "Altogether there were 148 prisoners"¹¹⁸. At Stirling Castle, after Culloden, "the numbers rose rapidly until by the end of May, they reached 140"¹¹⁹. Women Jacobite prisoners were sent to Edinburgh Castle, from whence Lady Ogilvy escaped in the disguise of a laundress. The clothes

were brought in by a friend who remained in her stead and was afterwards allowed to go free. Less fortunate were the Duchess of Perth and Viscountess Strathallan and her two daughters, who in 1746 were for a year "confined in a small, horrid and unhealthy chamber above the portcullis, used for many a year as 'the black hole' of the garrison". Some unfortunate Jacobites suffered protracted periods of imprisonment in Edinburgh Castle. The aged Macintosh of Borlum died there in 1743 after a captivity of 15 years for his share in the '15, and Macdonald of Barrisdale died there also in 1750.¹²⁰

Of the 58 Jacobites who escaped from prisons in England and Scotland, only 13 succeeded in doing so from English jails, "although the number confined in the latter was about four times as great as in Scotland".¹²¹ The most obvious reason for this was, no doubt, "the structural superiority of the English as compared with the Scottish prisons of the day, many of the latter being merely Burgh tolbooths, not well adapted to retain persons who had no desire to stay".¹²² For example, from Dumbarton Castle, whose insecure condition had been noted as far back as 1690, twelve out of thirty Jacobites escaped at different times. Scots jailers, too, would be more likely to look the other way during escape attempts than English turnkeys, and the proximity of homes and friends would act as a natural spur.

The treatment of Jacobite prisoners in Inverness, in the transports to London and in the various English prisons

to which they were dispersed was often brutal and inhuman. In the transports to London after Culloden and at Woolwich, "starvation, overcrowding, ill-treatment and an epidemic of typhus which took heavy toll of them"¹²³ added to the misery of defeat and captivity. An English doctor inspected the "Pamela" at Woolwich, August 1746, and found horrific conditions. On looking down into the hold containing the prisoners, he "was saluted with such an intolerable smell that it was like to overcome me, though I was provided with proper herbs and my nostrils stuffed therewith".¹²⁴ 54 prisoners emerged on deck, many "very ill as appeared by their countenance and their snail-creep pace in ascending the ladder, being only just able to crawl up".¹²⁵ Another 18 could only lie in wretchedness below decks. Many died.

In the English prisons, the Jacobites soon found that "possession of money was essential to secure the barest comforts of life"¹²⁶, some prisons being more expensive than others -- at the Tower, where the titular Duke of Atholl died in 1746, it cost him 10 guineas a week to live.¹²⁷ It was not till January 1746 that the Government started to make "financial arrangements for the rationing of the prisoners in England, although the authorities in Scotland had had Standing Orders on the subject which had been drawn up long before the outbreak of the '45",¹²⁸ and suggested 4d per day per man.

The Jail Returns and the State Papers^{quoted in The Prisoners of the '45} show that 88 deaths occurred in English and Scottish prisons and transports, but many more unrecorded deaths took place in

Inverness and in the English prisons. Only 18 deaths were reported in Scottish prisons.¹²⁹ The principal keeper of the Edinburgh Tolbooth had compassion on the many cold, sick Jacobites, the "crowd of persons" and, out of his own pocket, provided them with blankets.¹³⁰

With regard to transportation, that policy was carried out after the '15 rising "and some 700 prisoners taken at Preston were sent abroad and sold as slaves to the West Indies merchants".¹³¹ The vastly larger number of prisoners in 1746 were made to draw lots, one out of every 20 being sent for trial (excluding Gentlemen and landed proprietors), this applying only to those in English prisons.

In the earlier part of the period covered by this chapter, the harshest measures were applied to offences against a code of religious morality rather than to crimes properly so called. By the end of it, Presbyterian fanaticism had lost its impetus and its hold on public opinion, and in consequence, taking charge was a secular and central authority, which was concerned rather with offences more properly designated crimes, in the sense that they threatened the basis of society and the safety of the individual's person and property. "One of the most important and enduring achievements of the seventeenth century was the transformation of Scotland from a country in which the law had often been ill-enforced into one in which the law was generally obeyed".¹³²

Although prior to 1707 Scotland had her own sophisticated legal system, both civil and criminal, derived

from quite different sources than the corresponding system in England, and differing from it in many respects such as the system of courts and jurisdictions, rules of procedure and evidence, and the specific crimes with which offenders could be charged, the system had never been fully effective. Even a perfect legal system cannot maintain law and order unless the judgements and sentiments of its courts can be enforced by a strong central government. It was only after 1707, with the removal of the Jacobite threat and the end of heritable jurisdictions, that the effective rule of all Britain by the Westminster Government endowed the Scottish legal system with the sanctions it required to operate effectively.



CHAPTER III 1747-1835

Part One - The English Background

Before examining conditions in the Scottish prisons of the period, it is necessary to look at the situation in England and at the conclusions and proposals of the English reformers, since the two prison systems were eventually to approximate more closely.

The middle of the 18th century found the conditions of prisons in England (as well as on the Continent) virtually unchanged from the preceding centuries. In England some attempts at reform had been made. In 1702 the Society for the Promotion of Christian Knowledge made an abortive enquiry into the state of London prisons.¹ A Parliamentary Committee of 1729 was instructed to "enquire into the state of the gaols in this Kingdom", but it too led to nothing. Despite the Committee's report that the more "they proceeded in their enquiries the more dismal and shocking was the scene of cruelty, barbarity and extortion which they disclosed",² it had no effect. Prison reform was not of concern to a complacent and uninterested public.

Prisons were not yet prisons in the modern sense but still places where offenders could be kept in safe custody pending execution, transportation, or the payment of debts. A convict was a person convicted of a crime, not (theoretically) suffering punishment but awaiting it. Such a state of affairs was possible partly because of the widespread incidence of the death penalty, and partly because

of the practice of transportation.

But towards the end of the century, three factors combined to bring the question of prisons to a head. The most obvious, and the most urgent in its effect, was the end of transportation to America. The practice had been started by James VI and I, and continued by Cromwell. Those sentenced were sent to slave on the American plantations until, as a result of the War of Independence (1775-83), the British Government was forced to accept the unpalatable fact that America could no longer be used as a convenient dumping-ground for criminals whose numbers were increasing rapidly. After 1775 no alternative method of dealing with this problem was found for ten years, and from 1779 the hulks of the now idle convict ships that had taken prisoners to America were used as floating prisons and moored in the estuaries of English rivers. The lodging of the prisoners in those disused men-o'-war was intended as a purely temporary measure. At no time were the dilapidated hulks regarded as a satisfactory solution to the problem of convicts' disposal, but they continued to be used for almost a century faut de mieux, and the last one did not close till 1857.

Secondly, what made the resultant overcrowding of the prisons worse was the soaring crime rate, which may be attributed generally to the Industrial Revolution and the consequent rise of congested towns, to poverty and to the large number of unemployed soldiers from the wars. (The death penalty was less successful than might have been

expected in restoring the balance. Although there were in 1760 one hundred and sixty-four separate crimes which attracted the death penalty -- and by the beginning of the nineteenth century the total had increased to more than two hundred³-- the theoretical severity of the law was greatly mitigated by the attitude of both judges and juries, the former recommending more and more offenders to mercy, the latter committing "pious perjury").

Thirdly, ~~which~~ probably of least immediate but most lasting effect, there was the reforming movement. The whole question of punishment had been examined on a liberal philosophical basis on the continent, (part of the general humanitarian movement), by Montesquieu,⁴ Beccaria,⁵ Rousseau and Voltaire.⁶ Although their criticisms had brought about penal reform in many countries by the end of the century, they had no direct effect in England where the harsh brutal system continued. For the Industrial Revolution had completely altered the English social scene long before the rest of Europe experienced anything similar. The mushrooming industrial towns, the congested life there of the labouring classes, the widespread poverty and bad conditions all resulted in a state of unrest which made the Government wary of relaxing any deterrents. Added to this later was the ~~the~~ fear of any innovation induced by the alarming example of the French Revolution.

The English social conscience, such as it was, had a more practical representative: John Howard, Sheriff of Bedford. In The State of the Prisons, published in 1777

the result of visits to all the English prisons and several of those in Scotland and Ireland, appalled by the conditions he found, he urged improvements on a mainly deaf public. He made the following general recommendations (which are themselves a negative indication of the existing conditions): Prisoners should be classified, according to sex and degree of criminality. There should be separate confinement by night when solitude might lead to repentance; but prisoners should work together by day (subject to classification as above).⁷

Baths, infirmaries and chapels should be provided in all prisons. (Jail fever - typhus - was rampant, killing more people than the executioner did).

Jailers should be forbidden to sell liquor and should be paid regular salaries.⁸

Prisons should be regularly visited by magistrates.

Adequate bedding and enough food and fresh air to keep the prisoners healthy and able to work should be provided.

It was clear, however, that before the majority of these proposals could be put into effect new buildings were essential, and Howard designed a penitentiary house to embody his ideas. This was where the three factors coincided; the first two - the abolition of transportation^{at} and the rising crime rate - implied an urgent need for new buildings; the third - the reforming movement - showed the consideration to be borne by the architects.

Howard's proposals caught the imagination and approval of two very eminent lawyers, Sir William Eden and Sir William

Blackstone. Eden, influenced by Montesquieu and Beccaria, wanted to reduce the number of offences punishable by death, and considered the alternatives of flogging and the pillory, and the loss of civil rights and fines, but not prison. Blackstone, however, in his "Commentaries on the Law of England", envisaged the building of several new prisons where tasks of the hardest and most servile kind should be done by convicts who were otherwise to remain in solitary confinement.

All that remained apparently was to set the governmental machine in motion, and in 1779 the Penitentiary Houses Act was passed. The distinction between jails and bridewells had already become blurred, although it was not abolished until 1865. The 1779 Act for establishing a national penitentiary constituted both prisons and bridewells penitentiaries, pending the erection of such an institution. Howard's proposed penitentiary house, though never built, was the ancestor of the modern model prison.

Jeremy Bentham (1748-1842) also designed an ideal prison, a Panopticon or inspection house, a circular building with a keeper unseen in the centre, watching constantly by an arrangement of windows. It was never built, although Bentham made a contract with the government for it in 1794. The idea was, however, frequently used subsequently and, like Howard's proposed penitentiary, forms a link with the modern model prison.⁹

In the 18th century, with virtually no central control over prisons, the passing of an Act of Parliament was by no

means the last step in securing reform. ("It is not so much for want of good laws, as from their inexecution, that the state of the prisons is so bad".)¹⁰ The 1779 Act authorised the construction of Howard's proposed penitentiary and appointed a committee to choose a site: they were unable to agree, and when Howard eventually resigned as one of the Commissioners the whole scheme lapsed. Apart from the quarrel between the Commissioners, and the general public apathy, another factor had militated against the Scheme's success - the policy of transportation, roundly condemned by Howard, was revived in 1786, when it was realised that Australia, the new continent discovered by Cook in 1776, could provide a large-scale outlet. It was easier, cheaper, and altogether more comfortable to get rid of criminals by banishment rather than by imprisonment. It had always been the custom and public opinion was strongly in favour. So 1787 saw the first draft of convicts to Botany Bay, the start of a miserable procession which was to continue unchecked till the mid-nineteenth century.

Howard's underlying motive was to create an atmosphere which would be conducive to reform¹¹ (an ambition which was not realised in his lifetime or for many years after his death). The existing conditions did not permit the immediate adoption of his schemes, even supposing that they had met with a universally favourable reception. His immediate concern therefore was the alleviation of the actual treatment of the prisoner, and this concern was shared by his successors in the reforming movement, Elizabeth

Fry, her brother J. J. Gurney, her brother-in-law Fowell Buxton, and by Neild.

Elizabeth Fry, a Quaker and subsequently the mother of eleven children, started her work in 1813 among the miserable women and children in Newgate, and achieved remarkable results between then and her death in 1845. She campaigned for prisons for women only, classification, women warders, religious instruction, and above all for work, saying, "The enforced idleness, the dreadful ennui of prison, was worse to them" (the prisoners) "than its other miseries. It was in itself a direct incentive to vicious behaviour, as a relief from intolerable monotony".¹² Like Howard she was totally opposed to solitary confinement. She preached that, "Punishment is not for revenge, but to lessen crime and reform the criminal".¹³ "The convict ships for females about to be transported to New South Wales, engaged the benevolent attention and close care of Elizabeth Fry and her associates as well as the prisons".¹⁴ She succeeded by determined and indefatigable efforts in alleviating the appalling conditions which the women, often accompanied by their children, endured on board. Order and cleanliness, classification and employment, and ending of the cruel "ironing" were the results of her labours. But Mrs. Fry was "admired rather than imitated. Her tours of foreign prisons and of the hulks, ... her belief that it was society's duty to try and reform prisoners and not to starve and degrade them, were all looked upon by the general public as

indications of a soft heart rather than of a practical mind".¹⁵

James Neild, in his State of the Prisons (1812), gave detailed information on vile prison conditions, after the manner of Howard, and Fowell Buxton wrote in 1818 his Inquiry whether Crime and Misery are produced or prevented by our present system of prison discipline. In his book Buxton pointed out that much of what Howard had advocated as necessary was still not available in many prisons - "instruction, classification, regular employment and inspection".¹⁶

It is therefore against a general background of incipient intellectual and moral reform, and an indifferent if not directly hostile public, that the more or less static conditions of the prisons of the time should be examined. The reformers saw comparatively few results within their lifetimes. Their achievement was in sowing the seeds of a humanitarian spirit and in setting out practical proposals for establishing reforming conditions when the time should be ripe.

Part Two - The Scottish Background

Before the middle of the 18th century, as we have seen, few travellers were intrepid enough to penetrate the Scottish fastnesses. But after that date came a perfect spate to inspect the prisons - Howard, Neild, Elizabeth Fry and Gurney, to name only the famous. The most objective and reliable versions of life and conditions in Scottish prisons that exist are from such outside observers, who have no axe to grind. In Scotland the efforts of these reformers had, generally, been as ineffective as in England. The atmosphere conducive to reform which they aimed at and held to be essential did not yet prevail. The ideals of Howard and Mrs. Fry - separate confinement by night, classification according to sex and sentence, clean and healthy conditions, useful employment - in most cases depended for their fulfilment on a favourable public attitude, which was very far from existing.

Public indifference and intellectual hostility had combined to challenge the reforming movement. As late as 1831 Elizabeth Fry wrote, "My interest in the cause of prisons remains strong, and my zeal unabated; though it is curious to observe how much less is felt about it by the public generally".¹ In the Edinburgh Review of 1822, the Rev. Sidney Smith said that although he considered Mrs. Fry an excellent woman "hers is not the method to stop crimes".² He would "banish all the looms of Preston Jail and substitute nothing but the treadmill....or some species of labour

where the labourer could not see the results of his toil.... where it was as monotonous, irksome and dull as possible.... no share of the profits - not a single shilling".³ He advocated prisons where "there must be a great deal of solitude; coarse food; a dress of shame; hard, incessant, irksome, eternal labour; a planned and regulated and unrelenting exclusion of happiness and comfort".

Many Scots would have agreed with him and Scott was equally reactionary. His entry in his Journal for 20th Feb., 1828 is illuminating: "A certain Mr. MacKay from Ireland called on me - an active gentleman, it would seem, about the reform of prisons. He exclaims - justly, I doubt not, about the state of our lock-up houses. For myself I have some distrust of the fanaticism even of philanthropy.... The philanthropy of Howard, mingled with his ill-usage of his son, seems to have risen to a pitch of insanity. Yet without such extraordinary men, who call attention to the subject by their own peculiarities, prisons would have remained the same dungeons which they were forty or fifty years ago. I do not, however, see the propriety of making them dandy places of detention. They should be places of punishment, and that can hardly be if men are lodged better, and fed better than when they were at large....As to reformation, I have no great belief in it, when the ordinary classes of culprits, who are vicious from ignorance or habit, are the subjects of the experiment....The state of society now leads to such accumulations of humanity, that we cannot wonder if it ferment and reek like a compost dunghill....

A great deal, I think, might be done, by executing the punishment of death, without a chance of escape, in all cases to which it should be found properly applicable; of course these occasions being diminished to one out of twenty to which capital punishment is now assigned...When once men are taught that a crime of a certain character is connected inseparably with death, the moral habits of a population become altered, and you may in the next age remit the punishment which in this it has been necessary to inflict with stern severity".⁴

This then was articulate Scottish opinion, not necessarily that of the common man, but his views are not on record and therefore cannot be quoted. What were Scottish prisons like? Did they fall short of the stern standards regarded by Sidney Smith as just? Were they the "places of punishment" approved by Scott? We are indebted to Howard for a detailed account of Scottish prisons. He visited Scotland and Ireland in 1779 and again in 1782 and 1783 and inspected the prisons of Edinburgh, Glasgow, Perth, Inverness, Nairn, Banff, Kelso, Stirling, Jedburgh, Haddington, Ayr and others, and found them generally to be "old buildings, dirty and offensive, without courtyards and also generally without water".⁵ On his travels throughout Scotland he found conditions to deplore but also much to praise. He cited the following defects in the Scottish prisons: First, they had no courtyards. The original cause of this seems to have been the customary harsh treatment meted out to debtors

in Scotland by which they were strictly confined and denied even the benefit of fresh air. Thus debtors were treated with a severity curiously out of harmony with the comparatively lenient penal code, and were liable to stocks and scourging. Second, prisons were very dirty and there was a general lack of water and sewers. Water was carried in by keepers who often did not live on the premises. Inverness he found "the most dirty and offensive prison that I have seen in Scotland".⁶ The dungeon in the Bridge he was told had not been used for three years. Third, the prisons were not visited by the magistrates. Fourth, too little attention was paid to the separation of the sexes or to classification. Fifth, keepers were allowed licences for the sale of liquor and "the county allowance being paid in money to the prisoners, they generally spend it on whisky instead of bread".⁷ Of Edinburgh Tolbooth Howard says severely, "Such as have money have too much liberty. For in the same prison, I lately saw some, who were confined for a riot, drinking whisky in the taproom, in company with many profligate townsmen, who were readily admitted, as they promoted the sale of the gaoler's liquors".⁸ Sixth, as in all prisons, there was much sickness.

When Howard revisited Scotland he found that, "The new jounies to Scotland, now extended as far as Inverness, afford little but censure for the neglect of the prisons in that country".⁹ And "As to the prisons there (Edinburgh) Mr. Howard was obliged to remark to the Lord Provost 'that the splendid improvements carrying on in their places of

entertainment, streets, squares, bridges, etc. seemed to occupy all the attention of the gentlemen in office, to the total neglect of this essential branch of the police".¹⁰

Nevertheless Howard found much to praise in Scottish prisons compared with those in England and on the Continent. For all criminals were tried out of irons, and women were not ironed at all, unlike English prisons and some Continental ones where jailers demanded payment for "easement of irons". Also, when acquitted the accused were at once discharged in open court and no jailer had a fee from any criminal.¹¹ Third, with regard to debtors, if a debtor "declares upon oath that he has not wherewithal to maintain himself, the creditor must aliment him within ten days after notice is given for that purpose, with at least 3d. a day, but generally the magistrates order 6d. By the process of cessio bonorum, a debtor after being a month in prison, may obtain his liberty ... by making a surrender of all his effects to be divided among his creditors: though if he afterwards comes into better circumstances, his effects may be attached for the payment of those debts. This compassionate law prevents a creditor putting his debtor in prison, unless he has good reason to believe he is acting fraudulently",¹² whereas in English prisons a debtor was not released until he had paid 20/- in the £1. Thus often the English debtor was robbed of all hope, languishing in jail for twenty years or more. In 1729 a Parliamentary Committee found more than 350 debtors dying from starvation in the packed Marshalsea jail. In a previous year 300 had died

in three months.¹³ Food sent in by charity was often unfit for human consumption. Men and women competed with rats in vile cellars for food occasionally thrown to them through trap-doors. Debtors in England were supposed by an Act of George III to get 4d. a day maintenance, but few got it and Howard did not discover in all England and Wales twelve debtors who did, although felons had an allowance. "Some debtors are the most pitiable objects in our gaols".¹⁴ Fourth, almost half the English local jails were in private hands with consequent abuses -- this was not the case in Scotland, where the heritable jurisdictions had been abolished by the time of Howard's visits. Fifth, payment for "easement of irons" was common to many English jails and "this was only the first of the fees which the new prisoner was expected to pay".¹⁵ This was not the case in Scotland.

The clerk of justiciary told Howard that from January 1768 to May 1782 only 54 executions took place and 22 prisoners were pardoned,¹⁶ while from 1773-76 there were no executions in Edinburgh. And on "an average for 30 years preceding the year 1797, the executions for all Scotland had not exceeded six in a year" and "for 15 years before 1782, only 23 were executed in Edinburgh".¹⁷ Compare these figures with the English ones (even allowing for the larger population of England -- five million compared with one million at the beginning of the 18th century and nine million compared with one and a quarter million in 1801); from 1749 to 1772 there were 678 executions in London, the

annual average being 29 or 30.¹⁸

The difference in the penal codes of the two countries must be borne in mind. Stern as the Scottish one was, it was infinitely milder than England's. To take only one example, ordinary thieving or "pickery" was not a capital offence, unless the thief was one "by habit and repute" or was committing his third offence. It is doubtful if our system was ever so sanguinary as that of England. Besides the fact that the Scottish code was milder than that south of the Border, the more lenient Scottish system gave discretionary power to the judges to give alternative and modified sentences according to the youth and circumstances of the accused, whereas in England every crime had its assigned penalty which was inflicted despite any extenuating circumstances. Thus Hume declared with some complacency, "I repeat it therefore, without fear of contradiction, that generally speaking, and with a view to the ordinary course of vulgar practice ... our custom of punishment is eminently gentle".¹⁹

Howard found very few prisoners in Scotland as compared with England. Thus in July 1779 in Edinburgh Tolbooth he found only 13 debtors and 9 criminals, and in Canongate Tolbooth 5 debtors and 1 criminal. In September 1782 there were 13 debtors and 22 criminals in the Tolbooth, 3 debtors and 2 criminals in the Canongate; 3 debtors and no criminals in Dumfries; in Perth 4 debtors and 3 criminals; in Aberdeen 8 and 6; in Inverness 3 and 5.²⁰ While taking into account the difference in population, these low figures compare

favourably with the vast number of debtors cramming English prisons to suffocation point. For example, in 1776 Howard found in Middlesex, that is London and Westminster and three prisons in Southwark (King's Bench, Marshalsea and Borough-Compter), 1274 debtors, 228 felons, 194 petty offenders, a total of 1696.²¹

Howard attributed the small prison population in Scotland to the beneficial effects of the parish schools, the solid front presented by the ministers, parents and dominies in enforcing firm discipline. He probably overestimated Scottish piety but says, "There are in Scotland but few prisoners; this is partly owing to the shame and disgrace annexed to imprisonment ... and partly to the general sobriety of manners produced by the care which parents and ministers take to instruct the rising generation".²² No parish was without a school and in some there were four or five. "It is scandalous for any person not to be possessed of a Bible".²³

James Neild, following in Howard's footsteps, published in 1812 his State of the prisons in England, Scotland and Wales. With most of the reformers Neild was in agreement. Of Scotland he declared, "Whoever visits the gaols in Scotland will, generally speaking, be forcibly struck with that 'Destitution' which Hooker declares to be such an impediment to virtue, as, till it be removed, suffereth not the mind of man to admit of any other care".²⁴

On two tours of Scotland Neild conscientiously visited many Scottish prisons, being rewarded in several towns with

the freedom of the city. More than thirty years after Howard's journey north, Neild found the Scottish prisons largely unchanged. The same filthy conditions persisted, with prisoners living in wretchedness.

When Joseph Gurney toured prisons in North England and Scotland with his sister Elizabeth Fry in 1818 his findings were similar to Neild's and Howard's. As regards general conditions, "There are certain peculiarities in the construction and management of many jails in Scotland ... they may shortly be enumerated as follows: No airing-grounds; - no change of rooms; - tubs in the prisoners' cells for the reception of every kind of filth; - black holes; - no religious service; - jailers living away from their prisons; consequently, an impossibility of any inspection, and an almost total absence of care".²⁵

Apart from the aspects which are dealt with specifically later in this chapter, the overpowering impression which the prisons made on Neild and Gurney was of dirt and discomfort. Terse descriptions such as "very dark - excessively dirty", "no sewers are provided", "tubs... extremely offensive", "no bedding whatever is here allowed", "no bedding whatever or coals allowed", "no fireplaces or bedsteads or bedding, except for a little loose straw on the floor", "very damp and almost entirely dark", are commonplace in their reports.²⁶

The Old Tolbooth of Edinburgh, the "Heart of Midlothian", which may be regarded as epitomising most of the evils of the 18th. century Scottish prison, was described by Scott

as "a high and antique building, with turrets and iron grates",²⁷ and again, "with narrow staircase, thick walls, and small apartments".²⁸ Cockburn writes: "A most atrocious jail it was, the very breath of which almost struck down any stranger who entered its dismal door; and as ill-placed as possible, without one inch of ground beyond its black and horrid walls. And these walls were very small; the entire hole being filled with little dark cells; heavy manacles the only security; airless, waterless, drainless; a living grave. One week of that dirty, fetid, cruel torture-house was a severer punishment than a year of our worst modern prison - more dreadful in its sufferings, more certain in its corruption, overwhelming the innocent with a more tremendous sense of despair, provoking the guilty to more audacious defiance".²⁹

Nonetheless Cockburn deplored the demolition of the Tolbooth because of its great historic interest. It was pulled down in 1817. "The year 1808 saw the commencement of our new jail on the Calton Hill. It was a piece of undoubted bad taste to give so glorious an eminence to a prison",³⁰ declared Cockburn severely.

In the Tolbooth, upstairs in the Hall, was a black board on the wall, on which were painted the dismal verses, originally designed for the King's Bench Prison:

"A prison is a house of care,
A place where none can thrive,
A touchstone true to try a friend,
A grave for men alive".³¹

The place of public execution was the flat roof of a low building attached to the western gable, and to reach it convicts were conducted across the Hall. William Chambers often visited debtors there in the last three years of the Tolbooth's existence. Criminals were confined in the East End, and civil prisoners, including debtors, in the West End. The latter group could move about from the Hall to the apartments on the two upper stories. Chambers says, "My experiences of Tolbooth life were in the days of the free-and-easy prison arrangements. As yet, neither county prison boards nor prison inspectors had been heard of ... So far as the debtors were concerned, the prison was little else than a union of lodging-house and tavern, under lock and key. Acquaintances might call as often and stay as long as they pleased. The inmates and their visitors, if they felt inclined, could treat themselves to refreshments in a cosy little apartment, half tavern, half kitchen, superintended by a portly female styled Lucky Laing, whence issued pretty frequently the pleasant sounds of broiling beefsteaks, and the drawing of corks from bottles of ale and porter".³² Chambers mentions the "kind governor" - till his time condemned men and women were fed on bread and water for the six weeks between sentence and execution, but he broke this harsh rule and afterwards the rule was relaxed.

Official surgeons were as rare as official chaplains, and even where there was an infirmary in the prison, as in Perth, it might not be used.³³ Edinburgh Calton shines by comparison: "The infirmary is commodious, and is regularly

attended by the surgeon; there is also a small room fitted up for the reception of infectious cases".³⁴

Shackling, though less widespread than it had been, was still frequent, particularly in the case of condemned prisoners or refractory felons. Neild describes the Iron Room in Glasgow Tolbooth in 1809, to which "the Prisoner, after sentence of Death, is immediately conducted. There, a blacksmith fixes an iron strap round his leg, again fastened by a ring, which encircles a strong iron bar, called the Goad; and this, running across, is rivetted down to the stone floor, so that he cannot raise that foot one inch from it. In this situation I beheld two wretched criminals, who had been condemned at the Justiciary Court in September 1809, and were to suffer on the 8th. of November, on a platform in front of the Prison, which has a door conveniently adapted for the decent performance of that awful ceremony".³⁵ "The Magistrates, in addition to the 4d. a day paid in money, had humanely ordered them a hot dinner, to be sent from a tavern every day, and each had a wooden stool to sit upon. The Criminals appeared sensible of the kindness, and resigned to their tremendous doom".³⁶ Neither was shackling confined to the condemned. In Ayr, Neild found one James Fisher, who, imprisoned for stealing apples, had been in legbolts for sixty days. He had apparently shown signs of insanity, but as none of his

relations was prepared to look after him he was kept indefinitely in prison.³⁷

Added to the general squalor and inhumanity were the particular problems of lack of employment, lack of religious instruction, the peculiar misery of lunatics and debtors, and the power of the gaoler. It should be borne in mind, however, that from almost all the adverse criticism of Neild and Gurney, the Bridewells of Aberdeen, Edinburgh and Glasgow, were exempt. Employment there was more or less constant and well paid, religious services were regular, conditions were clean and baths frequent, bedding plentiful and comfortable ("probably somewhat too comfortable".)³⁸

Both Neild and Gurney were favourably struck with the relative paucity of criminals, particularly in the smaller county jails. Neild visited more than thirty prisons in Scotland. In five of these there were no prisoners at all at the time of his visits (Dunbar, Elgin, Forres, Kilmarnock and Renfrew). Of the rest, only in the gaols and bridewells of Edinburgh, Glasgow and Aberdeen were there more than a dozen inmates (taking into account both felons and debtors). In Greenlaw prison, for example, he found only one, a runaway apprentice who "had been for several months the only inhabitant ... decent-looking, well-behaved young man, of about 18; but preferred remaining there in solitude, rather than return back to his master".³⁹ Gurney and Mrs. Fry found no

criminals in Dunbar, Forfar, Brechin and Kinross (the last three were not visited by Neild.) In Montrose was one unhappy deserter, in comfortless, total solitude; in Stonehaven, the county jail for Kincardine, there was only one criminal, who had stolen ten shillings; in Kirkcaldy a woman and her son, criminals confined together; and Cupar county jail held only one occupant, a poor girl who had stolen a few potatoes out of a field. Gurney asks: "Where are we to find a parallel to this paucity of criminals in any county jail of England or Ireland?"⁴⁰ In Dundee prison, which was the jail "not only for the town of Dundee, (which is said to contain 35,000 inhabitants), but also for a considerable district of the county of Forfar, we found not a single criminal in it; and the magistrate who was so obliging as to accompany us, stated that there had not been a criminal in it for seven months".⁴¹ (At the time of Neild's visit there had been only four debtors).

Gurney proceeds: "The small extent of crime ... may be attributed mainly to the universal religious education of the lower orders, and to the general dissemination amongst them of the Holy Scriptures".⁴² And again: "In many parts of Scotland, such are the effects of the education and independence prevailing amongst the people, that crime is but seldom committed: the consequence is, that the criminal's confinement is generally solitary; evil association is avoided; the petty offender escapes the contaminating influence of adepts in crime; there is no herding together of large and lawless and dissolute companies".⁴³

Southey, in his "Letters from England", endorses this opinion and elaborates upon it: "More offences are committed in England than in other countries because there is more wealth and more want; greater temptations to provoke the poor, greater poverty to render them liable to temptation, and less religious instruction to arm them against it. In Scotland, where the puritan clergy retain something of their primitive zeal, the people are more moral; poverty is almost general there and therefore the less felt, because there is little wealth to invite the contrast".⁴⁴

It may be that both Gurney, (who in this respect was adopting the argument of his predecessors, Howard and Neild), and Southey are tending towards oversimplification. The scarcity of criminals in certain parts of Scotland does not necessarily imply that the Scots were more law-abiding. Scottish communities were very isolated and remote, much more than were the English, and exercised their own discipline. It was a matter of practical expediency as well as local pride to deal with trouble-makers themselves. The poor roads would have made it a great nuisance to take offenders to the nearest court of justice; a couple of men would have to act as jailers and lose a day's or more work which in a poverty-stricken community they could ill afford to do. Also as there was a great deal of antagonism between neighbouring communities, each one would be loath to put itself to shame by parading its offenders. The whole attitude of mind was still geared to summary local justice, and even after the heritable jurisdictions were abolished in 1747 the habit of

thought persisted that offenders should be dealt with locally and summarily. The concept that they had to be dealt with at centres in towns was a new one and difficult to assimilate. Another habit persisted too, that of banishing the offender from the district, and in many cases where he would have been dealt with severely if the case had come to court, the only punishment meted out was banishment. It seems reasonable to suppose that this ancient custom persisted in the face of more modern concepts of the administration of justice.

Also deeply ingrained was the habit of submission to the minister and Kirk Session which persisted in the small isolated communities even although its power was waning in the larger ones. It is probably true that there was less crime in the smaller communities, but in addition crimes committed were often not recorded nor dealt with officially, as we have seen. A kind of rough justice prevailed, having something in common with some of the early settlements in America.

In the larger towns the position is different, although in Neild's time the number of felons was still remarkably low. In Edinburgh Tolbooth in 1802 there were 26 felons, and in the Bridewell 51; in Glasgow jail 27, and in the Bridewell 90; in Aberdeen in 1809 there were in the jail 8 felons and 7 petty offenders, (the Bridewell had just been opened).⁴⁵

But in 1818 Gurney found the new Glasgow jail crowded to suffocation. "There are seldom less than 200 prisoners in the jail ... The number of criminals committed during the last three years amounting to 3,068".⁴⁶ The Bridewells of Edinburgh

and Glasgow were in fact in danger of overflowing by this time. In 1819 an American visitor found more than 200 prisoners in the Glasgow Bridewell. The Keeper showed him the books stating that "the daily average of prisoners during the last year was 210"⁴⁷ Similarly Gurney remarked that Edinburgh Bridewell was meant for 144 prisoners, but the persons committed were far more numerous, resulting in improper overcrowding.⁴⁸

Gurney explains the comparatively large number of prisoners in Aberdeen in this way: "I believe the fact may be accounted for, chiefly by some large cotton factories, in which upwards of 5,000 persons of both sexes work together in large companies. The manufacturing poor at Dundee work separately, each in his own cottage; and at Dundee there are no criminals."⁴⁹ Southey came to the same conclusion: "In consequence of herding together such numbers of both sexes who are utterly uninstructed in the commonest principles of religion and morality" inevitably the men became drunken and the women dissolute.⁵⁰

Again the diagnosis requires elaboration. As long as the family exists as a vital and authoritarian element in the community, there is less crime. In remote areas of Scotland the authority of the family tended to survive to a much greater extent than it did in the larger towns. In towns like Dundee where the cottage industry was still the norm, the family was still the unit and there was little or no crime, for there were less opportunities for young people to break away and

achieve independence, and in many cases it is a revolt against authority which so often leads to crime.

In the Aberdeen cotton factories the same family loyalties were not adhered to. When living and working in a family business, to steal from it is against all traditional ties of loyalty. But in a factory with a large number of strangers no such loyalty exists. The new workers were aimless and lacking in purpose. They were uprooted from a community of fixed habits with clearly defined objectives, where the work was exacting but was for the family, with patterns of life which had to be observed or the members suffered for it. But once moved into an industrialised community and working for a wage, they were not interested in the end product but only in the money. There was no longer any community of interest, no fixed moral obligation, no tradition of service in their new life, and if an easy way presented itself of augmenting their meagre wages, criminal or not, many seized the opportunity.

Again with the exception of the Bridewells, Howard's principle of keeping prisoners usefully employed during the day was hardly observed in the Scottish prisons of the period. And even in the Bridewells the choice of labour was very limited. The reason for this is obvious - the practical impossibility of finding interesting work for a mass of people from disparate backgrounds and with few skills in common, indeed in most cases with no skills at all. (Partly for this reason, the authorities at Millbank Penitentiary, having

started out optimistically in 1821 with an enlightened and imaginative programme of labour (including shoemaking and tailoring), were forced within a year to abandon everything except weaving. Another reason was that they relied for instruction in, for example, tailoring, on the presence amongst the prisoners of a skilled tailor). The prisoners "remained in an unchecked condition of idleness, riot, and vice of every description".⁵¹

But in the prisons generally no attempt at all was made to find work for the prisoners. In the Edinburgh Tolbooth, "No employment is permitted".⁵² In Montrose debtors were not allowed to work "even if they can procure it of themselves".⁵³ Gurney found the Edinburgh Calton Jail "quite deficient in one great point of vital importance ... no provision for the employment of the prisoners".⁵⁴ In Glasgow Tolbooth he saw "total idleness".⁵⁵

Perth prison was one of the few exceptions, indeed the only one specifically mentioned by Neild. The felons were allowed to work and to keep all they earned. At the time of Neild's visit three of the five female prisoners were spinning.⁵⁶ This old prison at the foot of the High Street was abandoned in 1819 when a new one was built, and then was later made into a small bridewell on the principle of complete separation, the prisoners working in cells at teasing hair or picking oakum. But in the new 1819 common jail, "They are allowed to associate daily in the airing-ground, and in a dirty day room in complete idleness, thus neutralising all attempts at reformation".⁵⁷ This was in 1836 and Mr. Hill, inspector of prisons in Scotland,

reported: "Very little good effect can be produced by imprisonment in the Perth jail. The number of recommitments is very considerable, ... no small number of the lowest class at Perth are well content to be in the prison occasionally, as they fare better there than at home, and are not required to do any work. The conduct of the prisoners is generally bad, and sometimes very turbulent".⁵⁸ Whereas in the small bridewell a well regulated discipline reigned. "The expense incurred beyond the prisoner's earning, including aliment, washing, and a sum of money given to each at his dismissal, was ... 1 $\frac{3}{4}$ d each per day".⁵⁹ Prisoners in the common jail cost 5d.

A different picture emerges from the Bridewells, not surprisingly since they were intended for the "correction" of vagrants and petty offenders by a course of labour. In the Edinburgh Bridewell there were thirteen workrooms in each of the four stories.⁶⁰ Gurney found the prisoners employed in weaving linen, cotton and woollen stuffs. All the bedding and clothing used in the prison were made there. "The produce of a prisoner's labour is applied to his own maintenance" and any surplus (which was common) was for the support of his family or given to him in three parts, (a) when leaving prison, (b) and (c) on certification of good conduct being received after six and then twelve months.⁶¹ According to Neild, "The accounts of this Prison, both with respect to diet and to work, are kept on a plan of singular correctness. The diet of each Prisoner is estimated at 1/6d. per week;" (which is considerably less than the average allowance to felons in the proper prisons), "to which is added the expence of clothes during confinement:

What the Prisoners' earnings exceed the above disbursements, is entered in a book for the purpose".⁶² In the Aberdeen Bridewell, a new house of labour, the occupants worked at spinning and picking oakum, and their earnings were similarly applied.

On the other hand, in the Glasgow Bridewell, where the women prisoners were employed in weaving, tambouring, picking of cotton, and the fabrication of sprig-muslin, the prisoners' earnings, when these exceeded the cost of clothes and maintenance, were presented to them in toto on discharge, sometimes with unfortunate results. "During my visit in 1802, an account was given me of one Margaret Raymond, who at her discharge received no less than fifteen pounds ten shillings and eleven pence; Another Prisoner had eleven pounds five shillings; and a third, five pounds nine shillings. Poor Margaret, however, became too rich to be prudent; she unluckily took the whole of her money at one payment; and being ineffectually lectured by past trials, the consequence was, that want of sobriety, and riotous behaviour, soon sent her back to her old habitation".⁶³ In another place, Neild points the moral: "To characters indiscreet from ignorance, the exertion of strict economy, at their Liberation from a Gaol, is in fact, the truest charity".⁶⁴

Neild put the moral principle in this way: "The Salary of a Gaoler should ever be proportioned to the trust and trouble incident to his important charge. He should draw no Emolument whatever from Misery".⁶⁵

This remark was made in the context of the Glasgow Tolbooth, where the gaoler (who had a salary of £60) was obliged to pay £100.2s per annum in wages to his staff. In addition to his salary, however, he had a licence to sell porter, ale and beer and to provide the prisoners with bread, and Neild deduced that a large proportion of his income must derive from the Taproom.⁶⁶

In the county jails it does not seem possible to relate the salaries of the jailers to their responsibilities, though of course the latter were variable. In Greenlaw, for example, where for several months there had been only one petty offender, the jailer's salary was £20.⁶⁷ In Jedburgh, where there were two debtors and three felons, the salary was only £5.⁶⁸

In addition to their salaries, the jailers were generally entitled to fees in relation to debtors. There was usually a charge of 2/6d. or 5/- (paid by the incarcerating creditor) for "caption", which was the warrant for the apprehension of a debtor. The messenger-at-arms who delivered the debtor to the jail, would produce the letters of caption and at the same time enter in the jailer's books the amount of the debt involved. In Edinburgh Tolbooth the caption fee was 6d. per £1 of debt.⁶⁹ In Renfrew it was 1/6d. if the debtor was a Burgess, otherwise 2/6d;⁷⁰ in Glasgow Tolbooth the Burgess debtor paid a caption fee of 2/9½d., the non-Burgess 5/6½d.⁷¹

This distinction between Burgess and non-Burgess was more frequently used in calculating the fees due by the debtor himself to the jailer. Such fees were charged in the majority of prisons, usually at a rate of 4d. a night. In Annan,

Dumfries, Kirkcudbright, Edinburgh Tolbooth, and Paisley, this was reduced to 2d. for Burgesses. In Dunbar the fee was 4d. for Burgesses, 1s. otherwise.

In Banff, on the other hand: "Every Prisoner possessed of Funds, except those who are committed for trial, and Convicts, pay for every night of confinement to the Gaoler, as follows: If a Burgess of Banff: 3/4d.; If not a Burgess, 6/8d. ... Gaolers frequently detain what effects the Prisoner may have had in Gaol, until they are paid their fees; and, for want of payment, sometimes obtain warrant, and sell the effects by auction".⁷² Similarly in the Canongate Tolbooth, Burgesses paid 3/4d. per day and non-Burgesses 6/8d.⁷³

In most prisons liberation fees were obsolete, but in Edinburgh Tolbooth and the Canongate they persisted. In the Tolbooth the fee was on a graduated scale related to the amount of the debt.⁷⁴ In the Canongate the fee was 2½% of the debt, unless the debtor was liberated under the cessio procedure or the Act of Grace, in which case no fee was charged. In addition, 1s. was payable to the jailer's clerk for entering the order or warrant of liberation.⁷⁵

Edinburgh Tolbooth had two other peculiarities: First, "Any person imprisoned for Civil Debt desiring to have a room by himself, shall pay for the same such sum as shall be agreed on with the Gaoler, and that in full of all fees; but such sum shall, in no case, exceed 10s. weekly".⁷⁶ Second, a fee of 1/6d. was charged for "each Petition by a Prisoner for the act of grace, and for the Clerk's declaration thereto".⁷⁷ It is not clear whether payment of this fee

could be postponed until aliment had been awarded. If it could not (and it is possible to suppose that it could not since there was no guarantee that aliment would be awarded), this seems to have been a very inequitable charge.

Garnish fees seem to have existed only in the Glasgow Tolbooth. The 2s. each, charged on the lower flat, went, Neild assumed, into a fund to provide coals and candles for the taproom.⁷⁸

The jailers in Dumfries, Edinburgh Tolbooth, the Canongate and Glasgow Tolbooth, had licences to sell porter, ale and beer. Neild remarks: "I cannot approve of a practice so justly unsatisfactory", and "what is a licenced Tap, but the certain means of introducing drunkenness and profligacy?"⁷⁹ The situation was exacerbated in the Glasgow Tolbooth by the practice of giving the felons their 4d. per day in money. As a result, the taproom was "generally filled both with Prisoners and Towns-people; so that the Tap is constantly kept running".⁸⁰

One of the "Rules to be observed by the Jaylor and his assistants" in Glasgow Tolbooth was: (Rule 4) "The Jaylor and his servants are expressly prohibited, on any account, to sell, or suffer to be brought into any of the Prisoners, spirits or strong liquor, whereby they may be in danger of being intoxicated; and to use their utmost endeavours to promote sobriety amongst those under their charge".⁸¹ This contradiction between giving the jailer a licence, from which a substantial part of his income is to be derived, and at the same time enjoining him to "use his utmost endeavour to promote

sobriety", is perhaps an indication of the extent to which the provisions of these rhetorical Acts of Council were put into practice.

"The spirit of the law of Scotland is mild, in regard to the imprisonment of debtors: while it is sufficiently vigilant to prevent fraudulent absconding".⁸² At the time of Neild's second visit in 1809, there were in the 32 prisons he saw only 112 debtors in all. The chief reason for this was the humane principle of cessio bonorum, (praised by Howard), a process which took the form of a summons at the instance of the imprisoned and insolvent debtor, all his creditors being called as defenders. "The pursuer must set forth in his libel the misfortune or accident by which he became insolvent, and bring proper evidence of it. He must produce, with the process, a certificate, under the hand of one of the Magistrates of the Borough where he is imprisoned, bearing, that he hath been a Month in Prison; without which certificate the Process is not to be sustained".⁸³ If the Court found the debtor entitled to the benefit of the cessio, then, on his granting a disposition omnium bonorum in favour of his creditors, he was liberated and protected from re-incarceration for any debts due prior to the decree to any creditor defending the action. The decree did not, however, protect from attachment by such a creditor any property subsequently acquired by the debtor.⁸⁴

"The Cessio is either refused or granted, according as it appears to the Court ... that the Pursuer of the Cessio has a right to it, as having acted honestly and fairly.

Thus, for instance, if it shall appear that he has not kept regular books, when he is a person in that situation of life who ought to keep regular books; and, if there be no good reason assigned for such books not having been kept, or not being exhibited to the Court; then the benefit of the Cessio has been often denied to such persons, even although there be no other evidence, direct or presumptive, of fraud".⁸⁵

It is therefore safe to assume that the majority, if not all, of the debtors in Scottish prisons were either fraudulent or awaiting the result of their summons for cessio.

A second mitigating factor in the plight of the debtor stemmed from the Act, 1696, c. 32, known as the Act of Grace. Under this Act a civil debtor with no resources was entitled to petition that his incarcerating creditor should aliment him while he was in prison, at a rate not less than 3d. a day. If aliment was awarded, notice was served accordingly on the creditor who, before 1825, was allowed ten days either to provide aliment or to consent to liberation. If within that time aliment had not been lodged the debtor was liberated.

In 1825 an amending statute was passed (6 Geo.IV c.62) to alleviate "the distress often suffered by ... poor prisoners, for the want of support between the time that they are committed to prison and the time when an aliment is awarded and paid to them". It was made unlawful for any jailer to receive a debtor into confinement unless the incarcerating creditor paid a deposit of 10s. as a means of and security for any aliment that might be awarded. If aliment was subsequently awarded the debtor would be liberated when the

deposit was exhausted unless the creditor had already lodged a further sum. If no aliment was awarded the deposit was returned.

The decision whether the debtor was entitled to aliment lay with the magistrates, as did the quantum; in fixing the latter they acted subject to the review of the Court of Session. Neild remarks, in connection with his visit to the Edinburgh Tolbooth: Aliment "depends on the rank of life in which the Debtor has been accustomed to move. When I was here in the Prison, on the 13th of September 1802, the Keeper received five pounds from the creditor of Mrs. Stuart, being one hundred days' aliment, at one shilling per day. The Debt was three pounds; the Costs three shillings".⁸⁶ In Glasgow Tolbooth the aliment awarded ranged from 10d. to 2/6d., but overall Neild found the average to be about 1ld.

"The privilege of giving sanctuary was anciently enjoyed by many places, as the Mint or 'cunzie house'. The Castle of Edinburgh seems also to have been at one time considered as a sanctuary".⁸⁷ By this time, however, only the Palace of Holyroodhouse and its precincts was recognised by law as a sanctuary, "not as an ancient religious establishment, but as a royal residence".⁸⁸

The privilege extended only to the non-fraudulent civil debtor. When he had entered the precincts he was protected against personal diligence for 24 hours. Thereafter he had to register his name in the books kept by the bailie of the Abbey, and Neild tells us that the registration fee was fifteen shillings⁸⁹ - a considerable amount for a bankrupt.

The debtor was not protected against diligence for debts contracted during his residence within the sanctuary - there was for this purpose a prison within the precincts ("one room above stairs, about 15 feet square, with a fire-place in it, and a window that looks into the court".)⁹⁰

We come now to the second, slightly sinister, limb of Bell's dictum: "while it is sufficiently vigilant to prevent fraudulent absconding". It was this aspect of the law relating to debtors which roused the indignation of all the prison visitors.

In spite of the optimistic definition of squalor carceris given in the Dictionary and Digest ("This term means merely the strictness of imprisonment which a creditor is entitled to enforce, with the view of compelling the debtor to pay the debt or disclose any funds which he may have concealed. It does not imply (as it did with the ancient churchmen from whom the term is derived) anything loathsome or unhealthy in the imprisonment in Scotland, which is indeed less close than in England".), the practical application of the principle seem to have resulted in unnecessary misery, particularly through the deprivation of air and exercise.

An act of Session 1771 gives this definition of squalor carceris, "There are no courtyards to the gaols in Scotland where debtors are confined. The original cause of this seems to have been the following very severe maxim in the Scotch law: 'After a Debtor is imprisoned, he ought not to be indulged with the benefit of the air, nor even under a guard; for Creditors have an interest, that their Debtors be kept

under close confinement, that by the squalor carceris they may be brought to pay their debt'".⁹¹ Despite this, it is perhaps worth interpolating that Neild says of Selkirk jail, completed in 1806, that "except that of Dumfries, it is the only one in Scotland which has court-yards for the prisoners";⁹² and it may be that by this time debtors were not so much deliberately victimised as simply obliged to share with the other prisoners the general squalor. However, from the debtors' point of view the result was the same. For example, in Nairn, Neild thought that "Both the Prisoners" (one debtor, one felon) "looked very squalid; and but too exactly exhibited that genuine 'Squalor Carceris'; already noticed with Horror". The felon was "a Woman, with her infant Child!"⁹³

On the other hand Gurney draws attention to the gaoler's interest in keeping alive the old principle: By Scots law, if a debtor escapes from prison, the jailer, and through him, the magistrate who issued the warrant, become responsible for the debt, therefore the jailer and magistrate protect their own interest. Thus "the Scotch debtor is consigned to the closest and most severe confinement. He has no yard to walk in ... he is kept like the vilest criminal", often crowded together in a close and fetid room which he is never allowed to quit. Should "enactments productive of so much unmerited cruelty ... be any longer tolerated by a civilised and Christian community?"⁹⁴ The principle that the magistrates were liable for the amount of the debt entered in the gaoler's book if the debtor escaped, remained until 1839.

In Haddington county jail Gurney found three debtors in conditions which he felt violated "the common principles of justice and humanity". He described "the most objectionable point of this terrible prison, namely, its accommodation for those debtors who are not burgesses ... These unhappy persons, innocent as they are of any punishable offence ... are confined day and night, without any change ... in a closet containing one small bed, and measuring not quite 9 feet square".⁹⁵

And an English visitor has left a grim picture of the Tolbooth in 1820: "He ... entered the abode of misery, the worst and most circumscribed jail in Europe, the Edinburgh Tolbooth, which has neither a felon's yard for air or exercise or even an area for debtors to breathe anything but dirt and infection".⁹⁶

In Perth, in the prison at the foot of the High Street, built on the site of the ancient chapel dedicated to the Virgin Mary, there was the inscription:

"Think with thyself whilst thou art on the Vay,
And take some course thy Creditor to pay
Lest thou by him before a Judge be calld
And by ane officer be here inthralld
Till utmost farthing shall by the be paid
Thou shalt be close within this Prison staid".⁹⁷

This cautionary verse remained valid until 1880 when imprisonment for civil debt was generally abolished, though imprisonment for debts under £8:6:8 was made incompetent in 1835.

Gurney had this to say of lunatics:

"A few lunatic asylums have of late years been erected in Scotland, but many more are required; ... At present, ... insane persons are either suffered to roam at perfect liberty, or are immured, ... in solitary dungeons. Thus there is preserved no medium between barbarity to the individual and injustice to the public".⁹⁸

In Haddington, Perth, Kinghorn and Inverness, Gurney was particularly struck by the plight of lunatics. In Kinghorn, a young laird, twenty years before Gurney's visit, had been confined for six years in such misery that he had ended his life by swallowing melted lead.⁹⁹ In Haddington Gurney found a young lunatic who had been kept in an "abominable dungeon, ... in unvaried solitary confinement, for eighteen months".¹⁰⁰ In Inverness the prison was "dirty and disgusting, but the cell of the poor convict "(lunatic)" was horribly loathsome ... hot sickly stench.... The poor creature had inhabited the cell six years".¹⁰¹ In the old disused Perth jail in the High Street, he found two lunatics in solitary confinement: "In these closets, which are far more like the dens of wild animals than the habitations of mankind, the poor men were lying ... " No one lived in to look after them; a man living in the town was appointed to feed them at certain hours. "They were in fact treated exactly as if they had been beasts. A few days after our visit, one of these poor creatures was found dead in his bed. I suppose it to be in consequence of this event, that the other, ... again walks the streets of Perth without control".¹⁰² These incidents could be multiplied.

Ten years before, Neild had written eloquently of "the absurdity, the danger, and the cruelty, of admitting such unhappy objects into the association of a Gaol. It is hazardous to all, and capable of being made very injurious to the poor frantick wretch, exposed, as he or she must be, to various inconveniences. I sincerely hope this narrative may tend to do away entirely the sad Practice - I might call it justly the inhuman Custom, of sending Maniacs to common Gaols; where they have the worst chance of becoming, not furiously only, but incurably mad; of endangering the Keepers, and destroying all order and decorum".¹⁰³

It may seem strange, considering the reputation Scotland had for her attitude to religion and for the universal authority of her ministers (which indeed were the chief reasons advanced by Neild and Gurney for the relative lack of crime), that in almost all the prisons which Neild visited there was little or no provision for religious instruction. Gurney remarked on the inconsistency: "How disgraceful is such an omission in a Christian country! and how extraordinary in Scotland, where the communication of religious knowledge is, for the most part, an object of so great attention!"¹⁰⁴ It is possible that the Calvinist inheritance may have been in some way responsible; wrongdoers tended to be written off as not worthy of help. Certainly in England in a great many of the prisons visited by Neild prayers twice a week and a Sunday sermon were normal.

In Annan, Ayr, Dumfries, Dundee, Edinburgh Canongate, Elgin, Greenlaw, Irvine, Kirkcudbright, Leith, Nairn, Paisley,

Renfrew, Stirling, and Montrose, there were no chaplains and no "religious attentions". Even to those under sentence of death there was no spiritual comfort "unless gratuitously and voluntarily attended".¹⁰⁵

In Glasgow, Inverness, Jedburgh, and Perth, there were no chaplains, and religious attentions were accorded only to those under sentence of death. Gurney said of Glasgow jail that although there were seldom less than 200 in the jail there was no public worship and no instruction. Thus the Glasgow jail is "a fruitful source of very extensive evil ... the jailer assured us that they uniformly leave the prison worse than when they entered it. He reckons, that of those who have been once committed, two-thirds come back again".¹⁰⁶ Gurney added that "Crimes have of late been rapidly increasing in Glasgow. The fact may be accounted for, partly by the vast increase of manufacturing establishments, partly by the large accession of uneducated Irish, but, perhaps chiefly by the powerful machinery of corruption".¹⁰⁷

Edinburgh Tolbooth seems to have evolved its own peculiar principle: "From what I saw here, I cannot but think that very little attention is paid to reforming the prisoners of the Tolbooth. In the first place, an attendance on Divine service is singularly made optional with the Debtors, and not permitted to Felons;"¹⁰⁸ though the latter were allowed a Bible each or a Testament.

Apart from the Bridewells, Aberdeen Tolbooth was the only exception to this extraordinary state of affairs. There the regular chaplain attended on Tuesdays, Thursdays, and Sundays.

In Edinburgh Bridewell there was an official chaplain who attended every Sunday. "To each room ... a Bible is assigned; and those who cannot read, are every Sunday detained with those who can read."¹⁰⁹ In Glasgow Bridewell the regular chaplain officiated every Sunday. In 1819 the American visitor saw over the Glasgow Bridewell and Lunatic Asylum in the company of visiting females who read the Gospel to women prisoners, as did the ladies' committee in Newgate, following the advice and influence of Elizabeth Fry, who on her visit to the prisons of the north with Joseph Gurney her brother, met the Glasgow magistrates and a number of interested ladies and encouraged them to "attempt the same kind of reform and moral superintendence and instruction which had proved so satisfactory in the Metropolis". The inmates of several cells are drawn together, and one of the committee reads a portion of Scripture to the "degraded objects of their care. In passing the door of one of their cells I noticed the profound attention of the prisoners" to their "amiable instructress. One of them was bathed in tears".¹¹⁰

The following extracts on two Scottish prisons of the period will serve to illustrate further conditions prevailing. At Dundee, Gurney in 1818, as we saw, found no criminals, but about 1823 "an epidemic of lawlessness broke out which proved too much for the few constables. Assault and robbery were so common that the jail could not hold all the prisoners".¹¹¹ People who had to be out late went armed with loaded pistols, for bands of robbers were organised. The situation became so bad by 1831 that the inhabitants urged the magistrates to

build a new Bridewell, but it was not until 1837 that a new building in Bell Street was completed at a cost of £12,000. While it was under construction one of the large rooms in the Old Steeple was used as a temporary jail, as well as cells in the Town House. The Old Steeple was thought to be a safer prison than the Town House, whence yet another prisoner had escaped. The insecurity of those two prisons was so great that speed was made to finish the new one and discontinue them, and in July 1837 "92 criminals from both places were removed to the new Bridewell in Bell Street between 2 and 3 a.m. by a party of soldiers from Dudhope Barracks and a posse of police".¹¹²

At Greenock "the earliest prison of which there is any information was set up by the magistrates in a thatched house at the foot of Broad Close. Jougs were affixed to the wall ... Sometime thereafter a change was made to the old courthouse and jail on a site between Cross-shore Street and Broad Close, now occupied by the Post Office. On this being found insufficient as a prison, the keep or Massimore of Greenock Mansion House was utilised until 1765, when the Town Buildings were erected in Hamilton Street. Later there was a guard-house in Market Street. In 1803 Sir John Shaw Stewart agreed to give ground behind the Mid Kirk for the building of a Bridewell, and private subscriptions were made for this purpose. The architecture was in the old castle style, with two towers in front and battlements on the top. The cost was £1500, of which £300 was subscribed by the town. It was at first under the inspection and special direction of the director of

Greenock Estate or his Baron Baillie, and the magistrates. The prisoners had to work to earn their own living".¹¹³

By the late Georgian era spontaneous native styles were almost completely submerged and Town Houses became of conventional neo-classical design, many of the larger ones having imposing steeples similar to the churches of the period (Ayr Town Hall 1828, Haddington 1830).¹¹⁴

"The early nineteenth century also saw the construction of many new prisons, whose architects invariably strove to combine strict functionalism of plan with appropriateness of stylistic expression; the rudimentary classicism of the unobtrusive little jail at Inverary (c.1820) and the fortress-like aspect of the complex radial lay-out at Jedburgh (1823) are illustrative of a wide range of style and plan-types". The Old Calton Jail, of which only the Governor's House remains, was a "spirited essay in the castellated manner".¹¹⁵ There seems to be a certain illogicality in the external embellishments of these castellated buildings. All these towers may not have detracted from the security of the prisons but they were superfluous. It was part of Howard's principles that money should not be wasted on providing unnecessary ornamentation. He considered that prison architecture should be strictly practical. But the nineteenth century concept of external appearance was the result of some mental confusion between the objectives of the confinement of inmates on the one hand and the repulsion of invaders on the other. Scott's romanticism brought about attempts to revive

this traditional Gothic castellated style of building, and these embellishments were adopted by nineteenth century prison builders who saw in them ideal security patterns. The architects seem to have forgotten or ignored the fact that their principle object was to keep prisoners inside, not to keep attackers out.

CHAPTER IV

PRISONERS OF WAR IN SCOTLAND 1756 - 1815

Little has been written about the captivity in Britain of so many thousands of war prisoners during the years 1756-1815. This is curious because the war prisoners, especially those officers on parole, formed an important feature of national life, mostly in the country towns where their presence made a great impact. But not a lasting impression. The memory of their sojourn has completely faded from the localities where they lived for years. Few stories have been handed down, and only some graves and a few exquisitely carved bone and wooden ships and boxes survive, scattered up and down the country, to testify that the prisoners of war were ever there.

The chief interest attaches to the French prisoners, since the numbers from North America, Spain, Holland, Denmark and other countries were insignificant in comparison. During the Seven Years' War (1756-63) the annual average number of prisoners of war in Britain was 18,800, and the total had risen in 1762 to 26,137. Between 1803-1814, the total number of prisoners brought to Britain was 122,440. Of this total 10,341 died in captivity and 17,607 were exchanged or sent home sick or on parole. The cost of these men came to £6,800,000 (the cost of the Seven Years War prisoners had been £1,174,906). Average mortality was between 1% and 3%, although epidemics naturally pushed up the average. The average mortality on the hulks was from 3% to 4%. The greatest number of prisoners at one time in Britain was about 72,100 in 1814.¹

The prisoners were housed either in land prisons, in the dreaded

hulks at Portsmouth, Plymouth and Chatham, or in private lodgings mostly in small country houses where they lived on parole if they were officers above a certain rank. The treatment of these men in the land prisons and on parole was similar in many cases to the treatment of British prisoners in France, but in the hulks a grim life, peculiar to Britain, was led. Those for whom no room could be found in the packed hulks were herded together wherever space was available, in borough jails, which were often fearful places, in common prisons like the Savoy in London, in adapted country houses like Sissinghurst in Kent, in adapted farm-houses in Cornwall, or in barracks as in Winchester and Edinburgh.

In 1760 the Government began to search for permanent land accommodation. The royal palace at Linlithgow narrowly escaped conversion into a war prison. Scott alludes to this in *Waverley*; "They halted at Linlithgow, distinguished by its ancient palace ... whose venerable ruins, not quite sixty years since, very narrowly escaped the unworthy fate of being converted into a barrack for French prisoners".² In the Revolutionary War of 1795 there were 13,666 French prisoners of war in Britain of whom 1,357 were officers on parole; these numbers soared in 1798 to 35,000.³ So, in 1806, Dartmoor was built, to hold 6,000 prisoners, although it was not occupied until 1809. The annual expense of a hulk to hold 700 prisoners was £5,864, while a prison the size of Dartmoor cost only £2,862 a year. But the hulks were kept in service throughout the Napoleonic Wars, and refractory men from land prisons all over Britain continued to be sent there.

By 1814, there were nine large prisons in the U.K., at Dartmoor, Norman Cross, Millbay, Stapleton, Valleyfield, Forton, Portchester, Chatham and Perth, holding about 45,000 prisoners. There were also some 2,000 officers on parole, and the hulks, consisting of some fifty ships, could hold nearly 35,000 men.⁴ Two very large Scottish prisons were at Perth, built in 1812 to hold 7,000, and Valleyfield depot near Penicuik, nine miles south of Edinburgh, built in 1811 and later enlarged until by 1814 it held 10,000.

The story of how the Perth Depot came to be built is a tortuous one. The ancient jail at the foot of the High Street had long been deemed inadequate, and the Town Council decided that the only possible place for the new jail was the ground on which the historic Gowrie House stood. With complete disregard for tradition it was unanimously decided to demolish Gowrie House. There was, however, one apparently insurmountable obstacle: the Town Council bestowed Gowrie House on Butcher Cumberland as a reward for winning the Battle of Culloden. He, having no wish to own an historic Scottish building, lost no time in selling it to the Government. The Board of Ordinance used it as a barracks and proposed to house a regiment of foot there. In 1809 the wily Perth Council saw a way round the obstacle. They succeeded in buying nine acres of land (later increased to seventeen) from Moncrieff of that Ilk, and exchanged them with the Government for Gowrie House. The Government at once proceeded to build a Depot for French prisoners and the Town Council to destroy Gowrie House.⁵

This transaction which Penny indignantly calls "one of the most shameful ever done in Perth",⁶ enabled the Depot to be started in 1811 and finished in record time. It was erected at the cost of £130,000 and part of it was ready for occupation by August 1812. It was intended to hold 7,000 men closely packed, including a hospital for 1,000 or 1,200 petty officers and invalids,⁷ (later this was to house criminal lunatics and provide jailers' houses), and accommodation for troops on guard. One of the hospital wards was allotted to prisoners who had broken their parole. When completed in 1812 it consisted of five three-storey buildings, each flat constituting a ward 150 feet long with outside stairs, and each had a separate airing ground converging on a common centre, the Market Place, with its high observation tower. The Market Place was separated from the airing grounds by an iron palisade. Three or four regiments of militia were always kept in Perth for guard duties. The Perth Courier reported on 9th July 1812, "The Depot forms altogether the greatest establishment of the kind in Britain. It is executing under the authority of the Transport Board in London who, it appears are charged with the care and custody of prisoners of war ... the ingenious and unusual mode adopted for ventilating, and introducing fresh air into the different prison buildings, and other means for ensuring the health and cleanliness of the prisoners and the secure manner in which every part of it is constructed, it is certainly the most complete Depot or Place of Confinement which has yet been erected. ... While it is to be deplored that the necessity of such establishments exists, it is at the same time satisfactory, and creditable to the country, also that such accommodation is provided for our prisoners as admits of their enjoying every comfort and convenience, consistent

with their unfortunate situation".⁸

The first division to arrive consisted of 400 men from Plymouth, landed from a frigate in the Tay at Dundee in August 1812, and marched up through the Carse. Never was there such a turn-out in Perth as there was to witness this novel sight. On the way from Dundee the prisoners were lodged for the night in a church as was often the custom on their treks from the sea. This division was evidently in pretty good condition. But in the winter great numbers arrived after Salamanca and were landed in the Firth of Forth at Kirkcaldy and marched through Fife in foul weather. The roads were bad and many of the men in wretched plight. Many, half naked in the bitter cold, gave up on the way. These were flung into carts one above the other, and when the carts were full others were tied to the back with ropes and dragged along.⁹ Once arrived at Perth, however, they were to find it one of the healthiest prisons in Britain. In 1813, out of 7,000 men, only 24 were sick and of these only 4 in bed.¹⁰ In February 1814, despite the excessive cold, the prisoners in the Depot continued to be surprisingly healthy. There had been no deaths among them for a long time, and the sick in hospital numbered only between 10 and 20 (out of 7,000).¹¹

In 1804 the old mansionhouse of Greenlaw near Edinburgh was bought by the Government and converted into a Depot for 200 prisoners. It stood in a park of sixty acres and consisted of a great square building surrounded by wooden palisades and an outer stone wall. After 1814 Greenlaw was empty until 1846 when extensive buildings were added, mostly of wood, and it was made the military prison of Scotland until

1888. In 1899 the old military wooden prison was demolished together with some of the original and the only relic of the old war prison is a stone guard-house.¹²

In 1810 the Government bought Esk Mills at Valleyfield near Penicuik, and in 1811 the first 350 prisoners arrived. Soon there was accommodation for 5,000. The new wooden buildings consisted of three storeys. No fireplaces were provided as it was considered that "the animal heat of the closely-packed inmates"¹³ would make them unnecessary. Nevertheless the French felt the cold cruelly. The whole was surrounded by a stout wooden stockade. Prisoners for Valleyfield were landed at Port Glasgow and marched by Glasgow, Bathgate and Edinburgh. The prison was evacuated in 1814 and remained empty until 1820 when it was bought privately.¹⁴

From 1756 to 1814 the vaults of Edinburgh Castle were invariably used for the custody of French prisoners. The Castle was used on account of its convenient proximity to waters infested by privateers and the first French prisoners were from a privateer. In 1759 there were 362 prisoners in the Castle and a correspondent wrote to the Edinburgh "Evening Courant" on behalf of the ragged miserable creatures seen trudging along the High Street to the Castle. Many who saw them were moved to tears. "'The City Hospitals for Young Maidens' offered to make shirts for twopence each, and sundry tailors to make a certain number of jackets and breeches for nothing".¹⁵ The prisoners had an airing ground, but as it was necessary to get permission to visit them the chance of

their disposing of any articles they made for sale was very slight. In 1763 the 500 prisoners in the Castle sailed home to France from Leith. In 1795 conditions were still satisfactory according to letters from French prisoners. During the Revolutionary War the Castle got 1,104 prisoners between 1796 and 1801, mostly privateersmen.¹⁶

In the later Napoleonic Wars the Castle was the headquarters in Scotland for the distribution of prisoners to Perth, Greenlaw and Valleyfield, and of officers on parole to small country towns, generally on the Borders. In these pleasant places the officers successfully contrived to make the best of things - it was very different for the rank and file in confinement.

The parts of the Castle where prisoners were kept are now military storerooms, but are probably very much as they were then. Steep flights of stone steps lead down into the subterranean chill beneath. In these dark, strongly vaulted dungeons the Frenchmen pined. Heavily built doors and strongly barred small apertures for windows intensified the gloom. "They are deep, dark, and horrible dungeons, but many of the names and initials of the luckless inmates, and even the games with which they sought to lighten their tedious days, were long discernible on the walls and rock. So many as forty men sometimes slept in one vault".¹⁷

Prisoners on Parole played a large part in the every-day social life of many parts of England, Scotland and Wales for at least sixty years, leaving behind pleasant memories of gaiety, charm and courtesy. At one time there were 5,000 officers on parole in Britain. The parole system was in

practice from the beginning of the Seven Years' War and the rules were very strict. An understanding existed between Britain and France that officers who broke their parole and escaped should be imprisoned in their own country or sent back to the enemy. According to the parole form of 1797 officers could walk on the great turnpike road within one mile from the end of the town but not into any field or crossroad, and they must return back to their lodgings at 5 p.m. in winter and 8 p.m. in summer. (Sometimes the prisoners got round this rule by moving the milestones some distance on). All correspondence was censored by an agent. Rewards were offered for the recapture of prisoners who had escaped, which often encouraged the riff-raff of the neighbourhood to tempt prisoners to break parole. "Any citizen who sees a Frenchman clearly disobeying the parole regulations is entitled to seize him or strike him down like a wild beast; and he gets a reward of a pound for doing it".¹⁸ The agents, whose duty it was to guard and look after the needs of the prisoners, were not chosen from the ranks of shopkeepers as the French complained that they were not fitted by position and background to deal with officers and gentlemen. So in the later part of the war agents were always naval lieutenants of not less than ten years standing.

The parole towns in Scotland from 1803 to 1813 were Biggar, Dumfries, Hawick, Jedburgh, Kelso, Lanark, Lauder, Lockmaben, Lockerbie, Melrose, Peebles, Sanquhar, Selkirk, and Cupar. The paroled officers were generally very well treated. Scott often entertained them hospitably at Abbotsford though he always thought of them as foreign soldiers.

Thus in a letter of May 1812, to Lady Abercorn, he mentions "the multitude of French prisoners who are scattered through the small towns in this country, as I think very improvidently. As the peace of this county is intrusted to me I thought it necessary to state to the Justice Clerk that the arms of the local militia were kept without any guard in a warehouse at Kelso, that there was nothing to prevent the prisoners there, at Selkirk and at Jedburgh from joining any one night and making themselves master of that depot".¹⁹

While the enemy governments all tried to treat their prisoners humanely, their goodwill had no power over their subordinates, who dealt with the prisoners at first hand and were accused, often with truth, of brutality, avarice and dishonesty. In Britain, prisoners were looked after by the "Commissioners for taking care of sick and wounded seamen and for exchanging Prisoners of War", (abbreviated to the "Sick and Hurt Office".) In 1799 the care of prisoners was transferred to the Transport Office till 1817, and in 1819 the Victualling Office took over.²⁰

Contemporary accounts and the testimony of French prisoners themselves seem to agree that the treatment of the latter in Scotland was good, and the health of the prisoners, particularly in Perth, was excellent and well above the national average especially that of Dartmoor. This was the most hated land prison of all - measles killed off one fifth of the prisoners in the winter of 1809-10.

In France, British prisoners at times were subject to ill-treatment, much depending on the character of the local commandant and on local feeling. In 1779, at Calais and

Dunkirk, Howard "found that gross overcrowding and inadequate food were the worst features of the gaols in which British sailors were held".²¹ But to balance this, when he inspected the French prisoners at Plymouth, "The reports he had heard in France of their treatment were only too well founded. In the hospital, ... there was evidence of utter neglect,"²² and in Winchester prison, he found over 1,000 French prisoners "confined in so small a space that the air itself was offensive".²³ It was a corrupt, hard, and callous age, generally indifferent to suffering: and viewed in the context of the time and bearing in mind our brutal behaviour to our own soldiers and sailors, prisoners of war could hardly expect tender treatment from government subordinates.

The dreaded hulks were worst of all. There the unfortunates dragged out lives of unbroken suffering. The hulks, for which it is hard to find an excuse, stand alone - nothing comparable to them existed elsewhere. But it should be remembered that many of the combatants on both sides who fought in the long wars were born and bred in bitterly poor conditions. They were inured to hardship, hunger and severe punishments while serving in the navy and in merchant ships. Such men, acclimatised to foul air, vermin, and varying rations in crowded ships, could endure philosophically the conditions in French and British prisons. A letter from a Scots sailor to his wife in Leith in 1813 begins resolutely, "This is to let you know that I am well, in a dungeon in Dunkirk, God be blessed for it, hoping to hear the same from you and all friends ... I bought an anker of brandy and gin

to ourselves, but, Jenny, that is gane, and a's gane; for the French dogs unriggered me in an instant, and left me nought but a greasy jacket of their ain. But, Jenny, I have my pay from the King of England, God bless him; and have bread and water from the French Emperor, God curse him! Out of my pay, I have saved as meikle as bought me a knife, a fork, and a wee coggie. Jenny, keep a good heart; for I'll get out of this net, and win meikle good sillar, and get a bottom of my ain too; and then have at the French dogs".²⁴ There is no lack of spirit here whatever his privations.

It was customary for the French government to pay French prisoners in Britain, the British supplying them with food. A similar arrangement existed with our prisoners in France. During the Seven Years' War, the French King sent money monthly - the 'Royal Bounty' - which was supposed to be distributed by appointed agents. Often the French accused the British of misappropriating the money. In 1759 the care of French prisoners "practically devolved entirely upon us, as their Government unaccountably withdrew all support".²⁵ "All prisoners suffered more or less from lack of food and clothing, and they were often in the power of extortionate and corrupt contractors, or at the mercy of famine prices owing to the prolonged wars".²⁶ Many men, long imprisoned, went almost naked and suffered greatly from the cold. "The true down-and-out has neither breeches, coat or shirt; he is simply naked".²⁷

During the American War of Independence Howard found that the French Government made an allowance of 3d a day to captains,

mates and surgeons, 2d to petty officers generally, and 1d to all ranks below (almost the same as the British Government gave to its own nationals imprisoned in France). Clothes and shoes were also supplied by the French authorities. Howard found that Americans were well clothed and were helped by the liberality of their own Government. In 1782 he found near Gosport, that "American officers were not on parole as other officers".²⁸ In 1798, during the Revolutionary War, the French Directory announced that they would be responsible for the feeding, clothing, and medical attention of prisoners, and at once reduced the daily rations by a quarter.²⁹ The Commons decided that an enquiry must be made to establish if complaints about the treatment of French prisoners in Britain were true or not. The enquiry's report of 1798 declared that all such allegations were grossly exaggerated and complained that all British proposals for the exchange of prisoners were rejected.³⁰

Each prisoner received a hammock, a very thin woollen blanket and a flock mattress weighing at most 2 or 3 pounds. French prisoners were supposed to eat the same rations as British sailors. Garneray describes the daily menu. The week was divided into 5 meat days and 2 fish days. Daily each man had 1½lbs of black bread and 7ozs of cowmeat, also barley and onion soup. On the two fish days, 1lb of potatoes and 1lb of red herring were doled out on Wednesdays, and 1lb of potatoes and 1lb of salt cod on Fridays.³¹ ("Tea and coffee, unless bought by prisoners, were luxuries and not on the dietaries").³² But often the prisoners did not get their full allowance. There was eager competition for the position of contractor - for obvious reasons. These men were often

greedy and dishonest. Copies of letters at Edinburgh Castle show correspondence between the Transport Office and a James Miller, contractor in Leith, written between 1808 and 1813. In 1808 he tenders to supply provisions to prisoners of war at Greenlaw for six months "till three months notice shall be given". His terms are - "at the rate of 7 10/32d per man per day". From Greenlaw in 1813 the same agent was asked to send out "herrings for tomorrow, potatoes, barley, salt, and cod".³³

French prisoners, however, seem to have had far fewer complaints about food in Scottish prisons than for example at Norman Cross; Borrow declared after a visit there, "Much had the poor inmates to endure, and much to complain of, to the disgrace of England ... Rations of carrion meat, and bread from which I have seen the very hounds occasionally turn away, were unworthy entertainment even for the most ruffian enemy, when helpless and a captive".³⁴

In 1799 the French Consulate repudiated the Directory's arrangement for the support of their prisoners of war and again forced the responsibility on the British Government and the Transport Office, which now replaced the old "Sick and Hurt Office". Holland refused to support her prisoners, so that they also became "the objects of our national charity".³⁵ The French defended their Act of Repudiation by declaring, rather pompously, that "The generally received custom of leaving to the humanity of belligerent nations the care of protecting and supporting prisoners marks the progress of civilisation".³⁶ As a result many Frenchmen presented the

spectacle of walking skeletons, dying of debility. Many survived only through the generous gifts of the British. The Government blamed much of the prisoners' misery on their incorrigible gambling habits. "The first time I ever saw a procession of French prisoners, it frightened me. I thought the world was at an end when I beheld so many skeletons in motion".³⁷

The behaviour of the prisoners was good on the whole, although even allowing for French natural gaiety and determination to make the best of things, the very length of time some spent in prison - languishing for ten or more dreary endless years - proved too much. Fierce quarrels would break out, frequently duels were fought with halves of scissors secured to the ends of sticks by resined twine. Often the quarrels and duels ended in death. Prisoners carried out their own courts-martial. "The accused was tried by the whole body of prisoners. There was no appeal to mercy and sentences were executed with implacable severity".³⁸ The penalty for violent behaviour was confinement by the authorities in the cachot or Black Hole, a deep dungeon opened only once every twenty-four hours. If he wounded a turnkey, a prisoner had his hands hand-cuffed behind his back for 12-24 hours. If guilty of murder or forgery he came under the civil law. Until 1810 no prisoner was executed for forgery; forgers were sent to the hulks instead. An Act of 1837 was passed to abolish the punishment of death in cases of forgery, and to substitute transportation for seven years to life or imprisonment for two to four years.³⁹

Prisoners of war were not required to work but "There was a great coming and going in this evil-smelling dungeon; apart from a few men lying flat on the deck, at the point of death, ... not a single one was idle. Some were planing wood, some carving chessmen or ships from scraps of bone, some were plaiting straw hats and slippers, or knitting night-caps".⁴⁰ Many of the Frenchmen were gifted craftsmen and lost no time in producing works that were small miracles of dexterity and can still be seen in museums up and down the country.⁴¹ They drew and painted, worked models in wood and bone, fashioned exquisite tiny chessmen, dominoes and draughts, backgammon, dice, papercutters, and toys. Nothing was wasted, including the bones from their meat. Model ships can be seen in Edinburgh and Perth and many small bone snuff spoons and straw-plaited boxes. "Vast multitudes went daily to view the market, and buy from the prisoners their toys, of which they had a great variety ... they had stands set out all around the railing of the yards, on which their wares were placed".⁴²

At Perth they dug clay out of the yards and modelled little figures. Some played the flute or the fiddle for halfpence, and gave puppet shows or Punch's opera. Those who had no talent for teaching languages, or music, or dancing, or painting, or making handicrafts, could earn "a trifle only (from 3d to 6d a day) from prison services"⁴³ as sweepers or barbers or washermen for their more affluent fellows. Those officers recaptured after breaking parole (they were numerous), or sent to prison for other serious

offences, were glad to pay humble prisoners 3d a day to be their servants.

Contemporary observers have remarked on the versality, ingenuity, and above all the industry of the French, and compared these characteristics unfavourably with the indolence of their opposite numbers in French prisons. These writers declared that they favoured the French practice by which men of all social grades, professions and trades were compelled to the colours, whereas only the scum of the British population joined the forces.

The Americans were in a class by themselves. In 1778 there were 924 of them in Britain. It was difficult for the British to dispose of the great number of prisoners taken from captured American privateers, and the Americans had not adequate numbers to exchange. There was not room in the jails for them all to be treated as prisoners of war. Thus there is the occasional mention of their landing at Newgate, ironed, with murderers and highwaymen, and no allowance for food or clothing. In London large sums of money were raised by private charity for them. Howard in 1779 visited Pembroke and found thirty-seven American prisoners of war herded together, scantily clad and filthy.⁴⁴ Many Americans were taken during the war of 1812. In April 1813 all Americans were ordered to Dartmoor, no doubt because of the ceaseless attempts to escape from the hulks. At Dartmoor there were already 5,800 French. The Americans resented fiercely "mixing with ruffians" among whom they counted many negroes, and a petition that the blacks should be segregated because they

were dirty and thieving was granted. By September 1814 there were 3,500 Americans at Dartmoor.⁴⁵

An American taken prisoner from a privateer has left a vivid account of life in Dartmoor. During the war of 1812 the prison contained as many as 9,000 prisoners of war at one time. The writer spent seven months there in 1814 and describes his confinement in bad conditions on arrival in England on a frigate from Barbadoes, where he had been captured. On board the British ship prisoners were issued with a third of a pound of salt beef a day, half a pound of mouldy ship bread alive with weevils and half a pint of cocoa. There was a three days sail from Spithead to Plymouth, then the march to Dartmoor to the Depot for prisoners of war. "The spectacle seemed to be one of great interest ... The docks, the grog shops and ale houses sent forth their tenants to see us ... The people were civil enough; they did not insult us, either by language or gesture".⁴⁶

On arrival at Dartmoor the prisoners were measured, interrogated, issued with hammock, blanket, pillow, spoon, tin pot and 3 gallon buckets. This self-styled "Yankee privateer" complains that the prison was adapted "to keep their tenants secure and to make them as uncomfortable as possible".⁴⁷ Prisoners were housed in two stories with capacious cock-lofts. There was no glass in the windows and so no light unless the shutters were opened which often meant intense cold for the prisoners. No fires were allowed and the weather seemed always dreary and drizzling. The inside of Dartmoor was very dirty, damp, dark and cramped.

The men's hammocks were hung in three tiers to save space. The writer does not mince his words - "this terrible climate"; never had he imagined a "gloomier abode of incarcerated wretchedness".⁴⁸ There were complaints about the food, which were usual in every period in all prisons. The beef ration was only about half what British soldiers and sailors got, so that Americans drew half a pound of beef a day, turnips, onions, barley and half an ounce of salt. If a prisoner had money he could eat well, as there were many cook-shops. Each man got 2½d per day from the American government. One or more schools were kept, as was the case in most prisoner-of-war prisons. A prisoner would offer to teach the three Rs or navigation for sums varying from 6d to 1/- weekly. The "Yankee privateer" set up as a grocer in Dartmoor. He complains of the number of impressed American seamen in the British navy, and that 2,350 imprisoned in Dartmoor had been discharged from that navy because they were Americans, although it was no fault of theirs that they had been impressed in the first place. He insists that there were upwards of 3,000 impressed Americans in the British navy in 1812. Dartmoor held some very rough types and the "Yankee privateer", evidently "a little man", disapproved of them and their ceaseless gambling. He praised the Spaniards' behaviour, "so different from the rudely familiar deportment of the fun-loving Yankee sailor".⁴⁹

At first the British government furnished the prisoners with clothing which the writer described as grotesque. "A coarse woollen jacket dyed a bright yellow color, marked on

the back with what is called the King's broad arrow which resembles the two sides of a triangle, the point turned upwards, and another straight line running from the point equi-distant through the middle. The letters T.O., being the initials of the transport office, were in staring black letters, one letter on each side of the arrow. Also a pair of pantaloons of the same color and material, with the same marks upon them; a conical cap made of coarse woollen stuff, and a pair of woven list shoes with wooden soles about one inch thick".⁵⁰ Very few prisoners accepted this clothing willingly. R. L. Stevenson in St. Ives describes the dress of the French prisoners in Edinburgh Castle, "jacket, waistcoat and trousers of a sulphur or mustard yellow, and a shirt of blue-and-white striped cotton".⁵¹

Dartmoor was very unhealthy and the prisoners suffered from smallpox, measles, pneumonia and excruciating toothache. 252 prisoners of all ages died at the depot, says the "Yankee privateer", who has a good word for the doctor in charge, a very kindly one-eyed Irish gentleman.

The men amused themselves with running, wrestling, boxing, cricket and, of course, gambling. There were also two theatres. The scenery had been made by French prisoners who had preceded them and was bought by the Americans. Attempts to escape by bribing the soldiers usually proved fruitless but this did not deter the indefatigable Americans from trying.

Indeed the Americans proved vastly annoying to their captors. "So independent were they of rules and regulations;

so constant with their petitions, remonstrances, and complaints; so untiring in their efforts to escape; so averse to anything like settling down and making the best of things, as did the French, that the authorities declared they would rather be in charge of 20,000 Frenchmen than of 2,000 Americans".⁵² Shortland, the Governor in 1814, declared with heat, "I never saw ... such a set of Devil-daring, God-provoking fellows, as these same Yankees. I had rather have the charge of 5,000 Frenchmen, than 500 of these sons of liberty; and yet I love the dogs better than I do the d--d frog-eaters".⁵³ The French were easy to manage compared to the turbulent Americans. Thus 2,500 French came to Dartmoor from Plymouth with only 300 militiamen as guard, while for the Americans the rule was man for man. Commander Wilson of the hulk 'Bahama' said, "These Americans are the sauciest dogs I ever saw; But d--n me if I can help liking them, nor can I ever hate men who are so much like ourselves".⁵⁴

There seems to be no record of any American prisoners in Scotland but the Yankee privateer's description of his life in Dartmoor, with the exception of the unhealthy conditions, can be applied to the Scottish prisons which housed prisoners of war.

Prisoners were allowed to dispose of their work at daily markets within prison walls. At Edinburgh Castle small sheds were erected behind the palisades separating prisoners from visitors, and the work was handed through apertures.⁵⁵ Often illicit trade went on in straw-plaiting: from smuggled-in straw prisoners plaited charming bonnets, and smuggled them

out to be eagerly snapped up by the female population. But after a couple of years or so, the country people began to protest that unpaid labour by untaxed prisoners was injuring them (in much the same way as the Trade Unions protest today), so the Government prohibited straw-plaiting and the prisoners suffered accordingly. But soon the smuggling of straw began again and was sold later as the manufactured article. This trade was very profitable to the outside dealer, who often made a small fortune. One Matthew Wingrave found it very worth while to move from Bedford to Valleyfields, where he bought wheat and barley fields in order to engage in the straw-plaiting trade with the prisoners, bribing the guards to make his plan easier. In 1813 he found himself on trial.⁵⁶ Soldiers who helped to smuggle the finished goods out were liable to be flogged severely.

Chief amusements of the French (the Americans did nothing constructive evidently, except to plan escape) were games of cards, dice, and the occasional use of an old billiard table -- a game they loved. About half the French prisoners earned honest money, half were gamblers only, but many of the industrious wage-earners were gamblers too -- in fact the French prisoner generally was an inveterate gambler: he craved tobacco and to get it would stake "his clothing, bedding and rations"⁵⁷, for days ahead, and, sadly, even his cherished place on the exchange-ladder. Prison surgeons who examined the emaciated corpses in the prison hospitals often testified to starvation as the cause of death. To visitors they presented a miserable

picture of distress, often being naked except for a few rags. In extremis, they would often draw the worsted out of rags covering them in hammocks, wind it into balls and sell it to industrious knitters of mittens. The privateers-men were gamblers to a man. Many Edinburgh prisoners were busily occupied with forging bank-notes and in Perth too this went on with the manufacture of base coins. One customer at the prisoners' market found "to his mortification the note to be a well executed forgery on the Perth Bank".⁵⁸

In the parole towns the amusements and recreations, as one would expect, were altogether more sophisticated than in the prisons. Before 1813, pay of officers on parole above and including captain was 10/6 weekly, and below captain 8/9. In 1813 the sums were increased to 14/- and 11/8. The surgeons in 1806 were allowed 6d for a bleeding, and 1/- for drawing a tooth. Serious cases went to the prison hospital, where assistance for more than five days cost 6/8.⁵⁹ There were many doctors on parole.

How did the prisoners contrive to feed and clothe themselves and pay for lodgings? Allowance from the government, says Chambers, was about 1/- a day. Sometimes two officers shared a room but this cost at least 2/6 weekly. They would have suffered severely if many had not got money sent from families in France, and the richer helped the poorer. They "messed together", and Chambers recollects how he and his brother reared rabbits in their backyard to sell to the Frenchmen's mess at 8d a pair -- the money being spent on books.⁶⁰ Living was cheaper in Scotland than in England,

and as the talented could supplement their income by teaching French, dancing and music, they lived well enough. The theatre and concerts were the favourite recreations of the parole officers and they lost no time in constructing a theatre wherever they found themselves. "In letters from prisons in England and Scotland the money asked for from home is very often used to pay for lessons, as well as for tobacco and a taste of spirits. But the bitterest privation is the lack of letters. No home news, in too many cases for years, was to all prisoners of war a cause of dreadful anxiety and depression, filling their hearts with the fear of death or misfortune".⁶¹

Prisoners in Scottish parole towns were treated with kindness and tolerance. In Cupar French officers lived on parole, while their rank and file were in Perth depot. "The Scotch and the French were old allies in history, and however unlike superficially, they seemed never to have failed in experiencing a subtle attraction for each other. Certainly the foreign officers were made curiously welcome in the country town, which their presence seemed to enliven rather than to offend. The strangers' courageous endurance, their perennial cheerfulness, their ingenious devices to occupy their time, and improve the situation aroused much friendly interest and amusement". They were treated by the residents of Cupar "with genuine liberality and kindness, receiving them into their houses on cordial terms. Soon there was not a festivity in the town at which the French prisoners were not permitted -- nay, heartily pressed to attend".⁶²

At Selkirk in 1811, ninety-three Frenchmen arrived marching from Leith. They included many army surgeons. During their two-and-a-half years there, they poured money into the town (£150 being the weekly average). Their weekly pay of 10/6 was ample for their lodging of 2/6, board was proportionately moderate and the rivers teemed with fish. The officers at once formed an orchestra and gave Saturday concerts, made a theatre and gave weekly shows -- Moliere and Racine. They used the old Selkirk subscription library and were voracious readers, especially of history and biography. Many attended masonic meetings. On each of the four main roads at a mile's distance from the town a notice read "Limite des Prisonniers de Guerre". The Selkirk townspeople were not friendly, but the country and gentlefolk round about made up for their chilliness by a warm hospitality.

This merry pattern was repeated in the other Border towns. In Kelso we hear of many balls and theatre shows. They did their own cooking and scared the landladies by chopping up frogs for "outlandish" fricassees. Their most singular peculiarity to the natives of Kelso was "their habit of gathering ... different kinds of wild weeds by the roadside and hedgeroots, making tea out of dried whin, and killing small birds to eat -- the latter a practice considered not much removed from cannibalism".⁶³ They were frivolous, "as many of them wore earrings and one, a Pole, had a ring to his nose; while all were boyishly fond of amusement and were merry, good-natured creatures".⁶⁴ The young misses

of Kelso were intensely aware of the charm, glamour and gaiety of the gallant prisoners. "The French showed great mannerliness and buoyance of spirits".⁶⁵ But they did not win universal approval. Fullarton says sternly that from 1810 to 1814 Kelso's average number of 230 prisoners of war "inoculated the place with their fashionable follies, and even in some instances tainted it with their laxity of morals".⁶⁶ The majority of the Kelso prisoners, although fighting under the French flag, were from Spain, Portugal and the West Indies, with some twenty Sicilians.

To Dumfries parole prisoners came in 1811. "The town is pretty enough, and the inhabitants, though curious, seem very gentle", wrote one of them.⁶⁷ An old man declared, "The first siller I ever earned was for gathering paddocks for the Frenchmen".⁶⁸ The first parole prisoners in Peebles, in 1803, were Dutch, Belgian and Danish. They learned handicrafts to eke out their scanty allowance, and fished in their leisure time. They were free to live and ramble where they liked, within reasonable bounds.⁶⁹ In 1810 arrived over a hundred prisoners captured in the Peninsular War. William Chambers describes how, as a boy, he went out to meet the new prisoners of war on the road from Edinburgh: "They came walking in twos and threes -- a few of them lame. Their appearance was startling, for they were in military garb, in which they had been captured in Spain. Some were in light blue hussar dresses, braided, with marks of sabre wounds. Others were in dark-blue uniform. Several wore large cocked-hats, but the greater number had undress caps.

All had a gentlemanly air, notwithstanding their generally dishevelled attire, their soiled boots, and their visible marks of fatigue".⁷⁰ They were all in the rank of naval or military officers and several were doctors. They managed to procure a billiard table and spent much time at it. They built a theatre -- to the French an essential amenity. "The remembrance of these dramatic efforts of the French prisoners of war has been through life a continual treat".⁷¹

Escapes were frequent from all places of captivity, including the parole towns. Often there were desperate and futile attempts, from Edinburgh Castle particularly in 1761 and 1811. When caught, which they frequently were, the punishment was the Black Hole. A favourite method of escape was by tunnelling; men carried out earth in their pockets and dropped and trod on it in the airing grounds. In 1799 two prisoners sawed through the bars of their dungeon with a smuggled sword-blade, and the Episcopal minister of the Cowgate, an Englishman, helped them to escape in a Newhaven fishing-boat to Inchkeith and thence to France. He was sentenced to three months in the Tolbooth.⁷² In 1761 one prisoner was dashed to pieces on the Castle rock and in 1811 fifty men escaped from the Castle by cutting a hole through the bottom of the parapet-wall, at the South-West corner below the Devil's Elbow, and sliding down a rope smuggled in in pieces for weeks before. One fell to his death and all the rest were captured in time.⁷³ Stevenson describes the 1811 escape in "St. Ives", but puts it in 1813, "On anybody not a seaman or a steeple-jack, the mere sight

of the Devil's Elbow wrought like an emetic".⁷⁴ Sievwright says there were 14 escapes or attempted escapes from Perth Depot between 14th September 1812 and 24th September 1813. 61 prisoners made a clean escape for a time, "32 of them, however, were re-captured and brought back to prison, leaving 29 ... who were never found".⁷⁵

The country people were very anti-prisoner of war during the early years of the parole system and the prisoners had been deemed fair play for oppression and robbery; hundreds of complaints were lodged by the prisoners concerning very expensive and bad lodgings, and there were many instances of mobbing and stoning in England. This extortion and antagonism seems to have been much worse in England. According to Garneray, in his village "more than 1200 Frenchmen were living in a block of broken down houses for which they paid an exorbitant rent to the English ... I managed to get for ten shillings a week, not a room, but the privilege of setting up my bed in a dirty garret with five other officers".⁷⁶ But in the Napoleonic Wars this attitude moderated a great deal. Thus the authorities found the sympathy of the people more difficult to combat than the daring of the prisoners. While the upper classes were often friendly they did not aid escapes since that would have meant encouraging a breach of honour. The lower classes helped, usually for gain alone. So profitable did escape-aiding prove that soon it had become as regular a pursuit as smuggling, with which it was closely connected. In 1812 a Bill was passed to the effect that escape-aiding should cease

to be a misdemeanour and become a felony, punishable by transportation for seven or fourteen years or life.⁷⁷ In the three years prior to 1812, 464 officers on parole had escaped, but not one British officer had broken parole abroad. Many high-ranking French officers, colonels and generals, saw nothing wrong in breaking parole.

Escapes from parole towns only became common when the alternative way of returning to France had to be stopped. This was when an officer on parole signed a declaration promising that unless he was exchanged for a British officer of similar rank by a certain date he would return to England on that date. He was then allowed to go to France, pledging himself not to fight. But it became so common for French officers to break parole and serve against us on gaining French territory that the Government stopped the practice. In 1804 the Transport Office complained that the French government had not released one British officer in return for 500 French sent to France on parole.⁷⁸ On this question of exchange of prisoners it is difficult not to come to the conclusion that the British were fairer to the French, Dutch and Danish than vice versa. Often the British would send over the cartel or exchange ships full and they would return empty.

Marriages between prisoners of war and local girls took place in the parole towns. Sometimes these marriages were happy but a large number of Frenchmen, knowing that in France such marriages were invalid, deserted their wives and children when they returned to France. The British Government paid

for the support of wives and children of prisoners. In 1814 complaints were made to the Transport Office about the public burden which the illegitimate children of the French prisoners were causing. The Transport Office declared that the fathers were liable under civil law, and that unless they provided for their children's maintenance they should go to prison.⁷⁹ Prisoners of war were not amenable to the civil law and thus debts incurred were wholly debts of honour. Chambers' father had befriended many Frenchmen in Peebles and had given them extensive credit. They departed at the peace of 1814, promising to send the money owed. None did, which led to a severe financial crisis in the Chambers family.⁸⁰

The departure of the prisoners for France began in June 1814. From Perth some sailed down the Tay, cheered heartily by the people. Others marched to Newburgh and on the thronged quay held their last market. It was during this march to Newburgh that the prisoners to a man sold the French New Testaments which had been distributed amongst them by the zealous missionaries of the British and Foreign Bible Society.⁸¹ In Edinburgh, jail delivery came after the peace of 1814, and the prisoners marched down by torchlight to the transports at Leith. Cheering thousands lined the pavements as down the High Street tramped the pale and haggard prisoners singing the Revolutionary songs, the Marseillaise and the Ca Ira.⁸²

In many a Scottish country town there was regret when the prisoners had gone. No wonder, for two or three hundred young men, many of good family and private means, living there

for months or years meant much in the life of the small community from both a business and a social point of view.

In conclusion it can be argued that the long sojourn of the French and other prisoners of war in this country had a permanent effect on Scottish and English prisons. It seems reasonable to draw the conclusion that enormous prisons like Perth and Dartmoor, still two of the most important ones, probably would never have been built on such a scale but for the pressing need to confine huge numbers of prisoners of war. For the Scots themselves had comparatively few of their own convicts to house, transportation syphoning off the majority. Before the French wars, any squalid hovel sufficed for malefactors, but national prestige required something better for the housing of foreigners and the standards of our prisons were raised accordingly. The readiness with which the Government granted money, the speed with which the buildings were erected, could only have been achieved in time of war.

After the French went home, the vast prisons remained empty for years, but the end of transportation in the mid nineteenth century saw them revert to their original purpose, only this time to incarcerate the natives.

CHAPTER V - 1835-1877

Introduction.

We saw in Chapter III that attempts to reform prison conditions in the late 18th and early 19th centuries were not successful. The efforts of Romilly, one of the greatest and most selfless of the reformers, had been blocked continually. The whole oppressive, punitive system was largely approved in both England and Scotland. But very slowly feelings began to change and in 1819 a Committee was set up to enquire into the criminal laws, its object being to bring about a revision of the criminal code. The resulting publicity kept the reform of criminal law in the public mind, and prepared the way for the work of Peel when appointed Home Secretary in 1821. There was no inspection of prisons until Peel's Act was passed in 1835, introducing Inspectors to the Prisons. This proved to be a turning point in prison history. The period under review saw the important Prison Acts of 1839, 1860 and 1865, exponents of different systems of prison discipline, the great influence of American prisons, the end of transportation and the establishment of its substitute, penal servitude. The period ends with the landmark of the 1877 Act which brought all prisons in the United Kingdom under the control of the central government.

"The eighteenth and nineteenth centuries formed an era in which deterrence was firmly established in the centre of the penal system".¹ Expiation and retribution were part of the religious climate of the mid-nineteenth century. Apart from members of certain professions who visited prisons

regularly -- sheriffs, advocates, magistrates -- the public generally were completely uninterested in prison life, and when a writer did give an opinion it was generally in favour of the severe treatment of criminals. The reactions of Carlyle and Hugh Miller are illuminating. Carlyle in his Latter-Day Pamphlets declares that nothing should be done for prison inmates, "diabolic canaille",² "thriftless sweepings of creation",³ until much had been done for those honest poor yet struggling in "dingy, poor and dirty dwellings".⁴ In 1850 a visit to a London model prison, housing some 1,200 prisoners, put him into a perfect fever of rage and resentment. The imprisoned Chartists angered Carlyle even more than the "notable murderesses"; thieves roused him to heights of furious rhetoric. He envied the peace of the prisoners, "the world and its cares quite excluded".⁵ He eyed the prisoners with angry revulsion and contempt: "Miserable distorted blockheads, the generality, ape-faces, imp-faces, angry dog-faces, heavy sullen ox-faces".⁶ He advocated "A collar round the neck and a cartwhip flourished over the back".⁷ He asked why should reformers work only on the "rotten material",⁸ and vituperated against the "dull, solid Howard"⁹ and his philanthropy. He refused to be associated with "a universal Sluggard-and-Scoundrel Protection Society ... the scoundrel that will hasten to the gallows, why not rather clear the way for him?"¹⁰

We can take from amid Carlyle's verbose and cantankerous rantings the central fact that he would greatly prefer efforts to be concentrated on the honest, deserving poor rather than

on the criminal classes. Scott, as we have seen, put forward much the same view, only more moderately.

Hugh Miller, writing in 1856, was alarmed at the increase of crimes with violence, and explains it by the loss of our penal colonies, and the vast number of ticket-of-leave men let loose on society. He urged new penal colonies and suggested the Falkland Islands "to rid us of a ... formidable class of wild beasts, -- the incorrigible criminals. It is surely not at all necessary that a penal colony should be a paradise". He adds: "We cannot put them in at the one end of a penitentiary in the soiled state and take them out white and pure at the other".¹²

No voice seems to have been raised in Scotland in the cause of reform. Tight-lipped, unyielding in disapproval of wrongdoing, Calvin's followers held to the grim adage: "If he's made his bed, let him lie on it". But it must not be inferred that there existed a deeper hostility to reform in Scotland than was perhaps the case. Only articulate opinion is available for reference, that of the common man is unknown.

Part One.

The year 1835 saw a turning point in prison administration with the Prison Act for "effecting greater Uniformity of Practice in the Government of the several Prisons in England and Wales; and for appointing Inspectors of Prisons in Great Britain".¹ Section 7 of the Act was most crucial: "It shall be lawful for one of His Majesty's Principal Secretaries of State to nominate and appoint a sufficient number of fit and proper persons, not exceeding five, to visit and inspect, either singly or together, every gaol, bridewell, house of correction, penitentiary or other prison or place kept or used for the confinement of prisoners, in any part of the Kingdom of Great Britain". By the same section, the five Inspectors had to submit to one of the Principal Secretaries of State a yearly report on the state of every gaol visited by them. Thus the period of uncontrolled local government over prisons ended and a period of supervision by inspectors appointed at Westminster, which was to last until 1877, began.

Different systems of prison discipline were at this time given prominence by their supporters. The congregate system which had prevailed for generations, i.e. prisoners in association by day and night (as in Newgate), was universally condemned. "The Victorian penal system was still chaotic - the majority of London prisons were ancient, insanitary and hideously overcrowded".² Thus the Coldbath Fields Prison had reached a stage of hopeless congestion by 1861. Newgate was a populous school of criminals - segregation was quite impossible.

Some reformers, including Hanway, went to the opposite extreme and advocated the "Solitary System", which meant no association at all during the whole term of imprisonment, and almost total deprivation of labour, books and exercise. It was held that through solitary contemplation the prisoner would be led to a better life. Others campaigned for the "Separate System", which was not so severe since it allowed work in cells, some books and exercise, and communication with prison officers.

Later came the "Silent System", which allowed work in association but in silence. "Conscious that jails were usually nurseries of crime, Victorian reformers introduced the ghastly Silent System; ... the prisoner ... was reduced to the condition of a numbered and uniformed automaton, condemned to perform so many hours of entirely useless work upon the crank or treadmill. At exercise the prisoner was sometimes masked. But neither the sociable squalor of Newgate nor the segregated gloom of the prisons that had been reformed and remodelled could check the rapid expansion of the criminal and vagrant classes".³

The treadwheel or treadmill, a big iron frame of steps around a revolving cylinder, could be fitted to a mill or used for pumping water. The crank was a wheel like the paddle wheel of a steamer; it fitted into a box of gravel which the prisoner had to turn by means of a handle, and could, like the treadwheel, be used for productive purposes. But it was rarely that either of them was. "Prisoners, male and female, trudging up the steps in their own separate compartments on

the wheel might work ... for six hours a day and achieve nothing except the climbing of 8,640 feet, and others turning the crank worked for the same length of time to do nothing but break the resistance of the gravel in the box and turn the handle through ten thousand revolutions".⁴

The reformers who believed that prisoners should be separated all the time found that this could not be done in the old prisons because of their structure, but now with the new ones going up it became possible. Apart from Wormwood Scrubs (1874) and Dartmoor (built to house the French prisoners of war in the time of Napoleon and converted to a convict prison in 1850), almost all the large English prisons were built in the 1840s. Albany Barracks at Parkhurst (1837) was intended to be a prison for longterm adults, to work on the land and in quarries. The general increase in crime and the number of criminals sentenced led to the reopening of Dartmoor, -- while the hulks, Millbank and Pentonville were packed. There were only about 154 convicts in Dartmoor in 1852, but the numbers rapidly rose.

The new system of prison discipline, that of solitary confinement, did not originate in Great Britain. It had been operative in parts of America for some time and it was from there that Britain adopted it. In Pennsylvania penal reform was considered very important: by 1786 the death penalty remained only for treason, murder, rape and arson; for all other serious crimes the penalties were whipping, imprisonment, or hard-labour in chain-gangs. In 1790 in Walnut Street Prison, Philadelphia, a new block of 24 cells

had been built and in them the prisoners endured solitary confinement and no work. The rest of the prison went on as before, working together in silence. Prisons like the new Walnut Street block went up in New York and Massachusetts but in time, because of overcrowding, solitary confinement had to be abandoned. However, owing to the influence of the Quakers (always strong on the power of solitude over the soul), two new State prisons were built in Pennsylvania, and in both solitary confinement was universal. They were the Western Penitentiary at Pittsburg (1818), built on Bentham's pattern, and the Eastern Penitentiary at Cherry Hill (1829). At the famous Auburn prison in the State of New York, built about the same time, convicts passed their days in solitary confinement and were given no work, while in other blocks they were separated at night but during the day worked in association in silence - Howard's plan. This had the advantage of making possible a greater variety of occupations and it was hoped that this would enable prisoners to pay for their own keep. The main disadvantage was that prisoners could never be prevented from communicating with each other, unless there was a very big staff to supervise. The cruel and unnatural Silent System at Auburn was maintained by flogging. Here was first seen the inside cell, a sort of cage, which was to have a great influence on subsequent American prison architecture. Other American States copied Pennsylvania and New York, others again went their own way; for example in Connecticut abandoned mines were used as prisons, and in Maine the prisoners were kept in deep pits reached by ladders. Some States were

more liberal: Georgia in 1832 was handing out rewards as well as punishments; in Kentucky prisoners were credited for work done; in Tennessee by 1833 sentences were commuted for good behaviour; in Vermont good-conduct prisoners got visitors, letters, tobacco; in Massachusetts they got education. But unfortunately it was the Auburn Silent System and Pennsylvania's Separate System which had most influence on English observers.⁵

One of the newly appointed Inspectors, William Crawford, "in company with several other European observers, visited America in 1836 and on his return drew up an enthusiastic report which caught the interest of the Home Secretary, Lord John Russell".⁶ In consequence, at Pentonville (built 1842) complete silence reigned as at Auburn, "as the men tramped from their lonely cells wearing masks of brown cloth so that none should recognise them".⁷ Even in chapel each man was hidden from the others. Pentonville was "a place of punishment and repression".⁸ The many attempts at communication were punished by immurement in the completely dark refractory cells for as long as three weeks on end. The most dreaded punishment was to be denied work. Many became mentally ill and there were a great number of suicides.⁹ Pentonville had 520 cells, each with a table, stove, gas-burner, hammock, mattress and blanket, water-closet, and unlimited hot and cold water. (The water-closets were later removed because the pipes had been used as a means of communication). In America, W. Ellery Channing, writing in 1832 of a visit to the Philadelphia Penitentiary, says that all the prisoners

were "confined in solitary cells, and seldom see any countenance but that of the keeper. The system is thought by some to be too severe as human nature shrinks from nothing so much as from this utter loneliness ... I think that terrible effects might follow, if the poor secluded beings were not allowed to work".¹⁰ But he was "very much disposed to regard it as the greatest advance yet made in prison discipline".¹¹ For after talking with some prisoners to find the effect on them of such seclusion, "my fears as to its stupefying effect seemed to be wholly groundless".¹²

Dickens was to reach a different conclusion. In 1842 he visited the same penitentiary and described it in burning words in his "American Notes". "the Eastern Penitentiary conducted on a plan peculiar to the State of Pennsylvania. The system here is rigid, strict, and hopeless solitary confinement. I believe it, in its effects, to be cruel and wrong ... I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers ... I am ... convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow-creature. I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body".¹³ Dickens saw all over the prison where absolute silence reigned. "Over the head of every prisoner who comes into this melancholy house a black hood is drawn; ... he is led to the cell from which he never

again comes forth, until his whole term of imprisonment has expired. He never hears of wife or children, home or friends, the life or death of any single creature".¹⁴ With the exception of the prison officers he would never see or hear a human being. The prisoner had an hour's exercise daily in a solitary yard attached to each cell. "He is a man buried alive, to be dug out in the slow round of years ... His name, and crime, and term of suffering are unknown, even to the officer who delivers him his daily food".¹⁵ The convict had a Bible, some books, fresh water laid on, and in his cell he worked at loom or bench. Dickens found that the prisoners grew deaf in time, and those who had been in for years he found "quite broken and crushed", and afraid to go out when the time came for their release. The prisoner had "a burning sense of the years that must be wasted in that stone coffin".¹⁶ "Better to have hanged him in the beginning than bring him to this pass, and send him forth to mingle with his kind, who are his kind no more".¹⁷ "It is my fixed opinion that those who have undergone this punishment must pass into society again morally unhealthy and diseased"¹⁸ That it is a singularly unequal punishment, and affects the worst man least, there is no doubt".¹⁹ Elizabeth Fry concurred. In a journey to Scotland in 1834 she was become anxious on "the solitary and silent systems; imported from America, where in many respects, and under the closest and most careful inspection they appeared well to answer, but which were to her feelings both liable to grievous abuses".²⁰ In 1838 she came north again, and "was at this time extremely

anxious as to the extent to which Prison Discipline was carried in Scotland. She greatly feared the enforcement of solitary confinement, and felt it her duty to make a sort of appeal against its possible abuses".²¹ In 1843, nearing the end of her life, she protested against the new prison of Pentonville with its grim, solitary confinement cells. "Let them see the sky!" she begged, "I do not believe that a despairing or stupefied state is suitable for salvation".²²

Dickens and Mrs. Fry were not alone in their condemnation of solitary confinement - in America they were having second thoughts. Humanitarian motives, combined with a growing doubt about the efficacy of solitude and meditation as a means of reform, led to search for alternatives to isolation, in New Jersey as elsewhere. Emil Frankel, in reviewing the development of penal philosophy in New Jersey over a 250 year period, notes that: "In his annual report of 1838, the Keeper admitted that ... solitary confinement apparently had little influence in decreasing the amount of crime committed within the state. And his annual report of 1839 contained an admirable analysis of the fundamental defects in the system of solitary confinement on the physical health of the prisoners through the impossibility of taking normal methods of exercise. But even worse was its effect upon the mental health of the prisoners, it leading to solitary vices and mental degeneration. The choice between the congregate and solitary type of confinement, he held, was fundamentally the problem as to whether vicious association is more to be deplored than mental and physical deterioration".²³

In many respects the old filthy, promiscuous prisons were less inhuman than the repressive, silent, cold storage ones of the 19th century. Prisoners in the 18th century died from gaol fever, those in the nineteenth century went mad or committed suicide in terrifying numbers.²⁴ To-day it is accepted that "In a very fundamental sense, a man perpetually locked by himself in a cage is no longer a man at all; rather, he is a semi-human object, an organism with a number ... It was the recognition of this fact that played a large part in the abandonment of solitary confinement for the general inmate population of the American prison".²⁵

But this development was still in the future, and the 1839 Prison Act showed the strong influence of America. It showed that official circles favoured the separate system, largely based on cellular isolation. It laid down that "to prevent contamination arising from association of prisoners in any prison in which rules for separation of prisoners shall be in force, any prisoner may be separately confined during the whole or part of his or her imprisonment". Separate confinement was not to be deemed solitary confinement, and each cell had to conform in size, ventilation, light and warmth, to a recognisable standard for health. Prisoners were now to be classified as:

- 1.) Debtors.
- 2.) Prisoners committed for trial.
- 3.) Convicted men sentenced to hard labour.
- 4.) Those not sentenced to hard labour.
- 5.) Any other prisoners. ²⁶

In Scotland, liability for management and custody remained with the Burghs from the Act of 1597 until the 1839 Act, to "improve Prisons and Prison Discipline in Scotland"; provided that the general supervision and direction of all Scottish prisons should be committed to a General Board of Directors of Prisons in Scotland, and County Boards were established which took over the local supervision and management of all prisons save the General Prison which was to be established at Perth and administered by the General Board of Directors as a government institution for the detention of criminals with long sentences. The cost of local prisons fell on the Counties who were empowered to levy an assessment on the Burghs in their area.²⁷ "Thus by the Act of 1839, the General Board of Directors of Prisons was empowered to erect a central prison at Perth, to which prisoners with sentences of nine months and upwards were brought from every county by stage-coach, and all the old forms of transport which existed before the days of railways. This was partly because the local prisons were inferior and inadequate, but the main reasons for this centralisation at Perth were, no doubt, financial, for the government had at hand sufficient land for the new building as well as the old French prison".²⁸ (The latter was closed in 1887). The General Prison, begun in 1840 and completed in 1859, is the oldest in Scotland. The first two wings were opened in 1842, and "among the first arrivals were three children under twelve

years of age serving 18 months to 2 years, and six children between the ages of 12 and 16 with 2 years or more".²⁹

Part Two

In the Minute Book of ^{the Prisons,} October 1840 is a table of the prisons in Scotland: a detailed and comprehensive list.¹ It gives the number, situation and description of all the prisons - gaols, bridewells, houses of correction and lock-up houses, or other houses or places in which persons might be legally confined as civil or criminal prisoners situated within Scotland. The information was gathered from 1) Reports of 1830 in obedience to the Act, 6 Geo.IV c.54; 2) Reports of Burgh Commission 1835; 3) Report of Inspectors of Prisons, 1835, -36, -37, and -38; 4) Returns obtained from the sheriffs, 1840. From the summing up, by the Prison Board, it is clear that although real concern is shown by them with regard to cleanliness, ventilation, airing-yards, and visiting, yet the over-riding consideration is to ensure the smooth working of the separate system.

This is shown to be a major factor in the Board's approval or otherwise of the prisons. For example, Aberdeen Burgh Prison, the old jail in Castle Street, has "little room for classification",² "is capable of but not very well adapted to the separate system";³ Dundee prison was used as a county burgh and police prison and as a bridewell civil and criminal; no classification was possible as "the gaol crowded and loathsome; new gaol indispensable".⁴ This was finished, "built on the radiating plan - Governor's house in the centre and five radiating wings; ... 120 cells and rooms ... principle of separation acted on but not completely".⁵ At Inverness burgh gaol, civil and criminal, "Bad condition ... dark, no airing-grounds, but secure, inconveniently situated".⁶ At Perth city

and county jail, civil and criminal, built in 1819, although it boasted twenty-nine apartments and a jailer's house, yet there was "imperfect classification"⁷ and it was "ill-arranged, overcrowded".⁸ Later, despite considerable alterations, the prison was "not yet very secure or sufficient for the separate system".⁹ Edinburgh Calton, burgh prison civil and criminal, though it had 7 day-rooms and 54 sleeping-cells yet there were 3 or 4 to a cell, and classification was defective.¹⁰ There was "no effective means of separation".¹¹ Edinburgh Lock-up House for criminals, behind Parliament House, was "little better than a moral pesthouse; young and old being crowded together in idleness and corruption".¹² The County Board ordered it to be discontinued. Glasgow Burgh prison, civil and criminal, built 1812-13, although it had "97 apartments; 62 for criminals and 37 for debtors, Does not admit of proper classification".¹³ Some Bridewells satisfied the required standards, e.g. Aberdeen Burgh and County Bridewell, criminal, "contains 70 apartments, complete means of classification".¹⁴ "Better than most prisons -- affords means of complete separation".¹⁵ "Also Glasgow, City and County Bridewell for criminals, erected 1823-24, had excellent management, separation and labour".¹⁶ Working arrangements could be threatened or completely upset by a large increase of prisoners -- "system of separation broken in upon by an unusual influx of prisoners -- 274 separate cells, while the average number of prisoners during the year was 330".¹⁷

Discipline and management naturally bulked large in their reports. Dundee's new prison had "discipline and management very good".¹⁸ Edinburgh Calton showed insubordination owing

to association.¹⁹ Glasgow Burgh prison was found to have "an utter want of order and discipline",²⁰ while again Glasgow Bridewell is praised for being "One of the best regulated of the kind in the empire"²¹ "This excellent prison goes on most satisfactorily".²²

The situation of prisons was carefully noted, Perth being "exposed to communication from without",²³ and Inverness "inconveniently situated".²⁴

The conditions -- cleanliness, ventilation and security -- are commented on. Dundee new prison is "clean and tolerably healthy";²⁵ Inverness is "in bad condition -- only 4 cells and 6 rooms all small -- dark".²⁶ Edinburgh Calton Bridewell, County and Burgh prison, built 1790, with "52 working cells and 129 sleeping cells; secure; though very imperfect in construction, on a better plan than any prison in Scotland built so long ago".²⁷ Edinburgh Canongate burgh prison, civil; "Ancient structure used only for debtors",²⁸ had a hall and eight rooms "which might with advantage be given up altogether",²⁹ and was in fact suppressed later by the County board. The Edinburgh Abbey, a Barony prison, civil and criminal, was declared sufficient for the purposes for which it was used. Generally bad conditions were the norm, but again Glasgow Bridewell is praised for its "perfect security, dry and clean, and tolerably well ventilated".³⁰

It is noted that many prisons still had no airing-grounds -- Aberdeen Burgh and County prison, Inverness, and Edinburgh lock-up

house -- while means of employment were all too often unprovided for. For example, Edinburgh Calton showed "want of means of work",³¹ while Glasgow Bridewell had "constant employment".³²

The running of the Glasgow Bridewell and its excellent management afforded "satisfactory proof of the advantage in point of economy and discipline of the abolition of small prisons, and having prisons on such a scale as to ensure respectable management".³³ Thus the County Board suggested that the Calton Prison and Calton Bridewell should be conjoined as one prison under the name of the Prison of Edinburgh, and the "County Board being desirous to act on the principle of affording to all prisons the benefit of the separate system, which they are of the opinion can best be obtained in a large jail, such as the Prison of Edinburgh, therefore providing the Prison of Edinburgh be enlarged enough to take all those previously in minor prisons such as Musselburgh, Pennycook, Lasswade, Dalkeith, and these should be considered as mere lock-up houses".³⁴

As regards Scotland's small prisons, it is little wonder that the Boards were eager to close them, for many were no more than lock-up houses, cold, damp, and often only moderately secure. They held petty culprits under examination and vagrants for short periods. In many cases they were seldom used. Barony prisons such as Kelso, Hawick, Melrose, Peterhead, were unpleasant places -- Peterhead being a "vault under the Town-House; never used; no gaolers,"³⁵ while Melrose, the private property of the Duke of "Buccleugh", consisted of "a single stone vaulted cell on the ground floor of the Court House ... seldom used".³⁶ Hawick was a "wretched

place, consisting of a single room ... ill-ventilated and dirty; males and females sometimes kept together".³⁷ The small burgh and county prisons, civil and criminal, were frequently as mean and miserable as the Barony ones. There were only four prisons in the whole of Ross and Cromarty and of these Tain's consisted of "a square tower, 200 years old, in the middle of the town; four rooms with a dungeon below ground, never used -- overcrowded -- insecure";³⁸ while Fortrose had "a wretched place, quite unfit for use -- consists of a single room, formed in the ruins of the cathedral; damp, cold, dirty, and insecure".³⁹ Such descriptions were repeated all over the country. At Gifford prison, property of the Marquis of Tweeddale, there was one cell, "seldom used, except at fairs";⁴⁰ Lockerbie's was formed "recently out of an old ruin";⁴¹ Cockburnspath was "a wretched damp hovel in churchyard";⁴² Crail's "2 rooms forming part of a steeple, not very secure";⁴³ Falkirk's "part of a tower on which stands the town's spire";⁴⁴ Wigtown's, part of the town-house, "very insecure so much so that magistrates call upon the inhabitants to keep watch upon it through the night".⁴⁵ In the islands, Portree had the prison for all Skye -- "very small, very bad";⁴⁶ for Stornoway there was no Inspectors' or Burgh Commissioners' report but "one apartment not sufficient ... the population of Lewis is 12-13,000";⁴⁷ in Orkney and Shetland, Kirkwall's prison was the town house, "insecure, cold, damp, ill ventilated communicates with the outside".⁴⁸ Here there was "grievous want of a proper prison".⁴⁹ Stirling Burgh prison of Stirling and the Counties of Stirling and

Clackmannan was "one of the worst prisons in Scotland".⁵⁰ Selkirk was one of the few smaller prisons to find favour. Built in 1804, it was well situated with an airing-ground; its eleven apartments were "sufficient in size, accommodation, security and repair".⁵¹ It was judged better than most small prisons and "a credit to those concerned".⁵²

Many of those hovels, vaults, and damp, dark rooms up and down the country clearly did not justify the name of prison. Even though in some a few prisoners remained long enough to require food, yet the scandalous lack of care could result in dramatic tragedies such as that at Tain when some prisoners were burnt alive when the prisons burned down -- the keeper lived at a distance.⁵³

Part Three

The Governor's Journals of the General Prison at Perth 1845-55, make dismal reading. They describe days of inadequate monotonous diet leading inevitably to sickness attacking constitutions already too often weakened from hardship, poverty and neglect before admittance; the dreary work, frequent grim punishments, and the harshness of solitary confinement resulted in many cases of suicide and insanity. Bearing in mind the rigorous solitary confinement that was in operation, the extreme youth of the majority of prisoners, and the wretched frugality of the diet, the picture that emerges is a miserable one. Prisoners fall ill and die (usually of pulmonary diseases) and are buried within the prison precincts, for although the relatives, if found, were always offered the body, only one case reveals that they accepted. Babies are either born dead or die within a week or two, or, perhaps even more pitifully, survive for the year during which they are allowed to stay with their mothers and are then sent 'outside'.

All convicts sentenced to transportation could be sent to Perth General Prison for their 12 months, sometimes 18 months, probationary period in solitary confinement. All juveniles served a month in solitary confinement before being transferred to the Juvenile Wing. In 1851, the several Government prisons and convict establishments in Great Britain were: the Hulks, Parkhurst, Portland, Millbank, Pentonville, Dartmoor, and Perth. Unlike the days of the old insecure prisons, escapes were now infrequent and solitary confinement

had to be endured, but at great cost. A number of prisoners - a horrifying proportion of them very young - "became incoherent in their minds" or "their minds gave way." There is a constant stream of prisoners crossing to the Imbecile and Lunatic Wing. Suicide attempts were frequent and often successful. If the imprisoned children were of very tender years (8 or 9) the initial month in solitary could be waived. Thus in September 1850 two 8-year-olds were admitted into the Juvenile Class and "owing to their extreme youth",¹ the surgeon recommended that the prescribed period of one month in prison previously should be dispensed with. In May 1852 two 9-year-olds also escaped the grim first month spent alone.

On 30th November 1847 an entry states that sixty-nine juvenile males (under 18) "were exercised in gangs of ten at a time in the Airing Galleries with a view to the relaxing of the separate system of confinement in accordance with the General Board's Order of date November 1847."² These sixty-nine included thirteen aged 13, four aged 12 and one aged 10. But despite this isolated attempt to alleviate the prisoners' loneliness, the separate system was firmly adhered to and as a result of this unnatural existence the Journals are full of sad entries of suicides or attempted suicides.

In April 1846 two prisoners hanged themselves and in May a 16-year-old attempted suicide, while a prisoner "who had scarcely been three hours altogether in the prison" hanged himself with his neckcloth and pocket handkerchief. From 1847-51 there were many suicide attempts by prisoners of from 12 upwards.³ There were a good many attempts in 1851, sometimes two or three in one day, and all by male prisoners under 30. Some were successful. For example, in February a 25-year-old "committed suicide by throwing himself over the Upper Gallery." At times those threatening suicide had one hand put in restraint gloves for nine days, or handcuffs might be substituted for gloves after several days. 1852 and 1853 show

similar stories.⁴ 1854 saw many more attempts, and one unsuccessful suicide had to be removed, a few weeks after the attempt, from solitary confinement to the Imbecile Prison.

Insanity in prisons of this period must be considered as bound up with solitary confinement. All prisoners who were weak-minded on admission became much worse in prison and eventually were bundled off to the Lunatic Wing. Frequently a prisoner would become "incoherent in his language"; he would then be "doubled up", very often "became violent", and from there it was a short step to restraint and the Lunatic Wing.

An entry for October 2nd 1847 refers to a visit on September 27th from a Director, who "gave an order to the Governor and the surgeon to have insane prisoners removed from prison to the wing for lunatics in the hospital."⁵ The Journals are full of references to such cases. Thus in January 1846 a prisoner, "having shewn symptoms of aberration of mind", was sent to the class in the hospital as "he (the surgeon) is afraid that his mind might give way under the separate system."⁶ He was joined the same day by a boy who had "lately taken various incoherent fancies."⁷ In June 1846 the surgeon reported four men and two women insane, and "as very weak-minded or imbecile nine men".⁸ The treatment of such unfortunates followed always the same pattern and was wholly arbitrary and oppressive in character.⁹ They were placed in coercion; doubled up;¹⁰ sent to the lunatic wing;¹¹ punished.¹² Only rarely was a vague attempt made to alleviate or improve their condition.¹³

Food is always a matter of paramount importance in any prison at any time. The diet has already been described but a fuller picture can be built up from the Journals. In 1846, on November 10th, 12th, and 14th, "all infirm prisoners and all prisoners who had suffered five months of continuous imprisonment, whether in the General Prison alone, or partly there and partly in other prisons, received 4oz. of butcher meat in terms

of the Board's order."¹⁴ When there was a milk scarcity a beverage called "treacle water" was handed out instead.¹⁵ Efforts were made to keep green vegetables in the diet.¹⁶ When the number of prisoners increased, as in July 1847, "the work in the cookhouse has become too much for the cook and his assistant, and this day an additional prisoner was employed; the two cooks are however kept separate from the prisoner in the bakehouse." When epidemics such as cholera broke out efforts were made to strengthen the resistance of the ill-fed prisoners. Thus in November 1848 "this day all the prisoners had an allowance of 4 oz. of butcher meat in addition to the ordinary diet, which addition is to be continued twice weekly, also the partial use of treacle water instead of milk to prisoners who have endured less than five months of continuous imprisonment was abolished." The surgeon added, "This had no reference to those prisoners already having butcher meat as part of their diet. This diet is to be continued as long as cholera is epidemic in this country." Punctuality of meals was important and it was noted in the Journal for 1847 that several times dinner was late "in consequence of the contractor omitting to send the oxheads in sufficient time."¹⁷

The scanty diet, the strain of the separate system, and the fact that many prisoners were in a poor state of health on admittance, led frequently to illness and death. "Thysis was a common complaint"¹⁸ (sometimes contracted before imprisonment), as were bronchitis,¹⁹ pneumonia²⁰ and scrofula.²¹ In September 1853 a communication from Under-Secretary Waddington states: "The attention of Lord Palmerston has been drawn to the number of cases in which prisoners are affected by pulmonary complaints, and he requests to be furnished with reports of Medical Officers of the various prisons of Scotland, stating whether they are able to assign any particular cause

connected with the Prison Regulations which can be supposed to produce the tendency to this mode of disease." Frequently prisoners died of debility²² or a slow decline, and diseases such as smallpox, marasmus, epistaxis, insanity,²³ and palsy,²⁴ figure in the gloomy pages. Epileptic fits were common²⁵ and sometimes epileptic prisoners got so "excited when handcuffed that they would have several epileptic fits right off," and occasionally would have some of their punishment remitted.

A curious malady afflicted male prisoners from time to time, referred to as "stiffness in the limbs". (There is no record of females being so affected.) Sometimes the prisoners would arrive at the General Prison already stricken, sometimes the disability would develop while they were there. On 2nd December 1845, the entry in the Journal refers to prisoners "who have become stiff in the limbs since their admission to this prison or who were stiff previous to their admission." Follows a list of nineteen boys, ages ranging from a 13-year-old, Alex. Grant, to 18-year-olds. All had several previous jail sentences. An 18-year-old from Glasgow prison had been so stiff during his ten months there that "he could not go to the cell door for his food." The entry for 10th December says: "Two boys were withdrawn from the sixteen stiff boys at present exercised daily in the large room adjoining the storehouse this day, both having recovered." On 3rd January 1846, "Alex. Grant died from an abcess in the lungs contracted after his admission to this prison." We are not told whether this was the same Alex. Grant.

The entry for 27th January 1846 reads: "The boys who have been exercised for some time past in the large room adjoining the store, for stiffness of limbs, having much improved, they were this day withdrawn and will in future be exercised daily in the ordinary yards and galleries". In August of the same year, "Ten prisoners affected with stiffness of limbs were taken out and employed in wheel barrows and digging up weeds with spades in the airing yard at the west of the hospital; they were masked and under constant superintendence of two warders". On 10th September, "The stiff prisoners continue to be exercised digging and wheeling barrows and also on gymnastic exercises ... Horizontal vaulting poles have been erected in two of the airing yards for exercising the juvenile prisoners with a view to preventing their being affected with stiffness of limbs ... The surgeon has this week reported 'Prison tolerably healthy'".

Occasionally prisoners would be "temporarily liberated by Act and Warrant of Justiciary on account of debility and broken health and as life would be in immediate danger by further imprisonment". Thus on 9th October 1846, a male prisoner was "temporarily liberated ... being so weak and worn out as to be in immediate danger of his life by further imprisonment". And on 30th October 1846 a prisoner "was in such a state of health at the expiry of his sentence that he could not be removed from prison", and stayed in hospital until the surgeon allowed him to move. In December 1847 a female was temporarily liberated on account of her health, and in February 1852 a convict sentenced to seven years transportation, while doing his probationary

confinement was temporarily liberated for the same reason. In May 1854 a prisoner was granted a temporary discharge on account of ill-health, "as long as he grants an obligation to return to the General Prison for his probationary confinement and seven years transportation for theft when better". He had not much incentive to get well.

Punishments were frequent and of an unvarying monotony. A prisoner was either handcuffed in his own cell or in a dark punishment cell for periods not exceeding seventy-two hours. Occasionally diet was reduced. By far the greatest number of punishments were given for (a) trying to communicate with other prisoners²⁶ - attempts that became more and more desperate; or (b) being noisy in the cell and disturbing the peace of the prison.²⁷ Both misdemeanours clearly stem from the unbearable strain of unnatural solitary confinement pressing on the very young. They also often destroyed their cell contents,²⁸ used obscene language and were disobedient,²⁹ struck the warders³⁰ and attempted suicide.³¹ The youth of the delinquents makes disturbing reading. The year 1847 is typical. Whatever the offence the Governor invariably justifies the irons and dark punishment cells: "The governor considered there was no other mode of punishment here adequate to the offence;" and again and again, "the prisoner being an imbecile the Governor could not adopt any other mode of punishment".

A truly desperate desire to communicate is apparent from these pages, coupled with, at times, an uncontrollable urge to smash and break up cells. A sort of frenzy would seize the prisoner, especially the ones under 25. In fact very few cases are recorded of misconduct

and punishment meted out to the over-35s. Apathy and hopelessness by then had crushed the spirit.

Throughout the years 1851-53, 10, 12 and 16-year-olds spent hours in dark punishment cells. In 1853 one 18-year-old is repeatedly in trouble. In April he gets five days (three in handcuffs) in the dark punishment cell "for destroying the dial and plate of a crank machine". A few days later he gets seven days "for wilfully destroying the newly painted walls of his cell while at crank machine labour". In May he has fifty-four hours in handcuffs and on 3rd class diet "for making violent noise in his cell during the night and breaking window;" in July three days for destruction of cell; in October three days "for wilfully injuring and taking sand out of a crank machine while at hard labour;" and later in the same month he is twice given three days and 3rd class diet "for throwing a jugful of broth in a warder's face". This youth's continued behaviour illustrates the futility of the treatment meted out to the prisoners - a completely negative approach.

Occasionally an unusual misdemeanour is noted, for example in August 1850 a juvenile prisoner "having repeatedly refused to allow of his hair to be cut, was handcuffed and otherwise coerced by order of the Superintendent until his hair was cut". But the Governor evidently held this coercion to be an unwarranted interference with the rights of the individual for he "highly disapproved of such proceedings" and ordered that in future such cases of disobedience be reported to him first.

Warders, who had to carry out all the punishments and supervise the work, these the Governors seem to have had some difficulty in keeping in their employment. Warders arrive and leave with astonishing rapidity. Certainly the authorities were averse to giving second chances to warders who displayed weaknesses such as unpunctuality when reporting for duty,³² falling asleep at their posts (frequent),³³ turning up in a state of intoxication (even more frequent),³⁴ being guilty of sheer carelessness,³⁵ or simply proving unsuitable for the job.³⁶

Sometimes the warders departed under their own impetus, a variety of reasons being given. Discontent with the wages, - "The Laundry Worker resigned his situation on the ground of the small wage and arduous duty," the Warder of the Epileptic Rooms resigned on the ground of inadequate remuneration (12/- weekly with uniform).³⁷ The Minute Book of 1853-4 notes the appointment of a warder to Greenock Prison at a "salary of 15/- per week, in the meantime, with a room in the prison". Complaints, such as dislike of the job - the Head Warder "resigned his situation as he found the duties too irksome for him;"³⁸ finding the work too hard and the authority too overbearing;³⁹ and moving to other occupations;⁴⁰ are typical. Sometimes no reason was given.⁴¹

The Governors themselves were not infallible. In November 1849 the visit to the prison during the night as ordered by No. 4 of the General Board's Rules of 3rd October 1848 was not made during the week, "it having escaped the Governor's memory". And again in July 1851 "owing to inadvertence the Governor did not visit the prison at night during this week". But, being the Governor, he apparently suffered no unpleasant consequences.

The table of the whole establishment of male officers at the General Prison, Perth, with salaries, at 31st December 1868 is of interest:⁴²

	<u>Min.</u>	<u>Max.</u>	<u>Annual Increment</u>
Governor	£450	£550	£10
Chaplain	£200	£330	£10
Visiting Roman Catholic Priest	£ 70	£ 70	
Visiting Episcopalian Clergyman	£ 50	£ 50	
Resident Surgeon	£250	£350	£10
Visiting Physician	£100	£100	
Scripture Reader	£100	£130	£ 3
Five Teachers	£ 70	£ 90	£ 2
Head Warder	£ 75	£100	£ 2/10/-
Two Trades Warders	£ 55	£ 75	£ 2
Thirty Warders	£ 52	£ 62	£ 1

Of these thirty warders only one was under 30 (28), one was 63, and the majority were in their 40s. The Head Warder was 55 and the Trades Warders 56 and 64. The Governor, chaplain and resident surgeon had "house, gas and garden", and the warders "house, after period of service, gas and uniform".

The table of the whole establishment of female officers at Perth was:

	<u>Min.</u>	<u>Max.</u>	<u>Annual Increment</u>
Matron	£175	£225	£ 5
Sub-Matron	£ 80	£120	£ 4
Two Scripture Readers	£ 75	£ 95	£ 2
Seven Teachers	£ 55	£ 65	£ 1
Superintendent of Convicts	£ 52	£ 62	£ 1
Twenty-Three Wardresses	£ 35	£ 45	£ 1

Of the twenty-three wardresses only four were under 30 (27, 28, and two of 29). Their average age was younger than that of their male counterparts, only one having reached 50. The Matron and sub-matron had furnished house and gas and the matron had a garden. The wardresses had furnished lodgings, gas and uniform. The limit of age of male teachers on permanent appointment was 20-40, and of females 25-40.

Peculiar to the Lunatic Department on the Male side were:⁴³

	<u>Min.</u>	<u>Max.</u>	<u>Annual Increment</u>
Superintendent	£120	£150	£ 5
Senior Warder	£ 62	£ 72	£ 1
Six Warders	£ 52	£ 62	£ 1
Teachers of Music	£ 8	£ 8	

And on the Female side:⁴⁴

Senior Warder	£ 43	£ 53	£ 1
Two Warders	£ 35	£ 45	£ 1
One Sick Nurse	£ 45	£ 55	£ 1
One Housekeeper to Wardresses	£ 40	£ 50	£ 1
One Outer Gatekeeper	£ 15	£ 15	

From the Report of the Commissioners appointed by the Lords Commissioners to inquire into certain civil departments in Scotland in 1870, Hill Burton is listed in the Prisons Department in 1854 as a Stipendary Manager at a salary of £700 annually, a chief clerk in 1846 receives £300, and an assistant clerk in 1859 has £100.⁴⁵ At the General Prison, for the year 1863-64, £3,047.13.0 was spent on salaries of Prison Officers and clerks, £2,939 being wages of Inferior Officers and Servants. For 1869-70, £7,625 was spent on the salaries of Prison Officers and clerks including Inferior Officers. For 1863-64, £4,887.10.

was the sum spent on victualling for prisoners at the General Prison, and for clothing and Bedding for them £1,312.10.0, while during 1863-4 £540 was spent on Gratuities to prisoners and in 1869-70 £800.⁴⁶ The wages of prison officers - of warders, chaplains, teachers and the rest, are important as showing the significance of these people in the eyes of contemporary society as evidenced by the amount of public moneys spent on them.

The Minute Book 1853-54 sheds more light on conditions. A report July 1853 by Menteith and Cay after visiting Perth General Prison (for private information of the General Board.):-

"We this day visited the General Prison, dividing the duty of seeing the prisoners, every one of whom separately had an opportunity of stating any complaints. A very few, and those troublesome persons who had often been in Prison before, made statements as to the Diet and the like, all of which on investigation proved frivolous or groundless".

"Total number of prisoners in custody today is:

	<u>Males</u>	<u>Females</u>
	419	9
Insane prisoners	26	9
	—	—
Leaving male prisoners	393	
	—	

Of these male prisoners there are:

Separate	323
Boys in Class	39
Epileptics and prisoner nurse	4
Imbeciles	7
Doubled up in prison by surgeon's instructions	14
In cookhouse (under warder)	2

	<u>Males</u>	<u>Females</u>
In outdoor work (under warder)	2	
Assisting weaving warder	2	
	<hr/>	
Total	393	
	<hr/>	
Total number employed is:-	389	-
Unemployed	30	9
	<hr/>	<hr/>
Total	419	9
	<hr/>	<hr/>

"Showing that, with the exception of the insane, only four persons were unemployed in the prison.

Only three persons were on the sick-list".

The report continues with information that the person who for 23 years has been surgeon at Woolwich Prison, and lately visited Perth, expressed some surprise at the remarkable general state of health, which he attributed in a great degree to the excellence of the bread and to the proportion of milk allowed. He was struck with the circumstance that there were few cases of scrofula.

"No punishment has occurred in the prison for a week. The manner in which the prisoners expressed themselves generally indicated satisfaction with their treatment - one prisoner had a handcuff on, which he seemed to admit that he deserved".

"We saw boys at their exercise. ... The last punishment which occurred in the class was ... more than two months ago".

The visitors saw the "weak-minded and epileptic ... who all appeared contented", and reported that the Lunatic Department "appeared to be in all respects in excellent order."⁴⁷ Complaisant reading after studying the Governor's Journals for the General Prison!

In October 1853 a meeting of the Board refers to "difficulty experienced in various Districts in finding persons willing to inflict the punishment of whipping on Juvenile Offenders." The Board decided that the difficulty is "very much, if not altogether, attributable to the inadequacy of the remuneration allowed for performing the duty; and that ... the Government should take the proper steps for raising that remuneration."⁴⁸

In October 1853, Sir John Kincaid, Inspector of Prisons, recommends a modification of the Rule as to Beds and Bedding of convicted prisoners in Scotland. He concludes from inspection that as regards "results of the Guard Bed system lately introduced for the sleeping of certain classes of prisoners I have found it to be the opinion of all the Prison Officers ... that it has a strong detering influence without damaging in any respect the health of those subjected to it, and I may add that I received no complaints from any of the prisoners."

"As however there is reason to fear that a fatal Epidemic is approaching with winter, I think it would be a prudent precaution to modify that portion of the Rule which relates to the Bed Clothes, as well as to discontinue the discretionary power vested in the Keepers

of Prisons in the event of prisoners misconducting themselves, for such cases can be punished under the ordinary rules."^{48b}

Kincaid reported that "the failures to complete Hard Labour Oakum tasks as being much more numerous than those of the Crank Machine",^{48a} and on the grounds stated by Kincaid the Board agreed to modify Hard Labour Rules "for the present" to the extent of "reducing by one half pound the minimum quantities of oakum which the Rule requires to be picked by the several classes of Prisoner to whom it is applicable." It goes on to say that "for the present" the Governors of the other prisons, if a convict for some good reason cannot complete a task "at either kind of Hard Labour", may "mitigate in such case the penalty of stoppage of food, so far as shall appear necessary."^{48c}

There is reference to a relaxing of the separate system as to "certain convicts under sentence to transportation who are to be retained in the General Prison for somewhat longer than the usual period of 12 months for probationary confinement." They were to have "additional exercise daily", and to be "associated together at some useful occupation for limited periods." Governor at Perth reported that "this system works well."^{48d}

The Governors' Journals of the General Prison at Perth for the years 1862-65 show the same pattern as the earlier ones.⁴⁹ Both sexes endure the same punishments for the same offences of swearing, refusal to work and break-up of cell furniture. Several times young female prisoners "violently assault a teacher and warder, tearing their bonnets", and young males get hours in hand-cuffs for "fighting on

chapel stairs after Divine Service" and for "forcing open his crank and removing the sand". There are the same illnesses and suicide attempts, babies "sent out", and the same steady stream to Imbecile wards. Trouble with the staff goes on. In September 1862 a male teacher "was suspended by the Governor for his being addicted to the use of intoxicating drink to excess".

In December 1862 "a serious riot took place attended with great personal violence" in the Chapel of the Female Convicts. The immediate cause was that the Governor, acting on information from the Matron, ordered cells to be searched and found eleven bottles of Porter and "unauthorised quantities of articles". To complicate matters, a male prisoner with a false key was found at large in one of the galleries, and the Governor recorded rather naively, "I feared that an attempt might be made to reach the female Prison". An informer next declared that "about three dozen men ... were to break out at night and through the night choke the Night Watch and get into the Female Prison". The whole prison now seething with near hysteria, the Governor, as a precaution, took "a small double-barrelled pistol but did not load it". The riot getting out of hand, he loaded it with blank cartridges, entered the chapel and "fired two shots towards the ceiling". During a momentary lull, a female wardress was "carried out bruised and insensible". The Sheriff was sent for and arrived accompanied by a "small detachment of soldiers without firelocks, and several constables ... a large body of armed soldiers arrived subsequently". There was much excitement and noise on seeing the Sheriff, who addressed the prisoners and the chapel emptied. Tolerable quietness

reigned by evening, but a small guard of soldiers and constables remained all night.

Greenock Prison may be taken to be reasonably representative of the Scottish Prisons other than the General Prison. It appears, from the reports on Greenock made by the Inspector of Prisons between 1834 to 1864, to have been a very dreary place. "There was no lighting, no bath, no exercise and in 1838 'a few dresses were procured for the use of such prisoners who had no proper clothes of their own'. These were not lent to prisoners who were not likely to remain for more than a few days".⁵⁰ Little money was spent on food, for although there were 846 prisoners during 1838, the net expense of the prison in that year was a mere £325.11.11½. The average daily cost of each criminal prisoner, including cooking, was "nearly 3d."⁵¹

John Love was Governor of Greenock for thirty years from 1842 to 1872, when he died at the age of sixty, so most of the Greenock Journal is his. There are many points of similarity with the Perth Prison Journals - the suicide attempts and the punishments. Love has strong personal opinions about the separate system, being very much against the congregate system. Thus (February 1848) "The whole of the prison is exceedingly damp today which must be very injurious to the health of the prisoners on being turned into their cells at night out of the halls where they are kept so warm during the day". And in April, "The prisoners are now confined to their cells, the congregation of them in the large room is a most pernicious system".

Later the same month he says "congregating has a very bad effect", and he "fondly hopes" that before winter a new heating apparatus will be set up which will let them "keep them in their cells day and night". Also improvements are to be made in cell windows to prevent the prisoners from communicating with each other "by the window and with their associates on the outside". In November he notes with satisfaction that the heating apparatus is finished and the cell windows altered. But by August 1856 "Sir John Kincaid, Inspector of Prisons, visited this prison and suggested that the prisoners sentenced to hard labour should not be employed on the crank machine on account of the cells being so small and badly ventilated. I have acted on the suggestion".

There were a few suicide attempts and Love had his disciplinary troubles too. In his prison females contribute their share towards the harassing of the authorities. Thus in March 1848 a 16-year-old female "was handcuffed for twelve hours for swearing by her maker that she would take Miss Gibson's life before she left the prison and for being otherwise noisy". The usual punishments are listed for the usual misconduct, chiefly calling out or destroying walls, but not nearly so often as at Perth, and there is no record of dark punishment cells or of seventy-two hours in handcuffs. In October 1848, a 38-year-old was handcuffed for twenty-three hours "for threatening to throw his water pot at the warder and calling him unbecoming names. This is one of the wickedest men that I ever met with in prison". In December

1849, a ten-year old boy was handcuffed for seven hours for climbing up to his windowsill and calling out, and a 14-year-old handcuffed for seventeen hours for a similar fault. In March, 1850, a 15½-year-old "had on the respirator and irons for two hours for calling out at his cell window and being otherwise noisy and pretending to be in a fit while nothing ailed him". In January 1851 an 18-year-old was "put in irons for climbing up to the window-sill and sending up articles to the female in the cell over him". The same month a 20-year-old was handcuffed for seven hours for climbing on to the sill and "calling to the female over him". The Governor on his inspection found "all quiet save for this prisoner in irons (an 18-year-old) who was disturbing the whole prison until I tied him down to the floor". In December 1854 a 13-year-old was "handcuffed for fifteen hours for outrageous conduct".

Rarely is there interference with the diet although in August 1850 a prisoner had "dinner bread stopped for a day for using obscene language to a warder". In August 1848 the Governor allows those prisoners "awaiting trial and likely to remain in prison for a length of time, 6 oz. of meal for supper instead of 4, as they complained of hunger before breakfast". In August 1856 a male prisoner stopped "taking his food at dinner-time, alleging that it was watery; it only required to be stirred up with a spoon as it was early dished and the Barley and Milk had gone to the bottom". Two days later the Governor writes ominously that "the prisoner commenced to take his food at dinner-time, having seen the Board".

Epidemics raged at Greenock too. In September 1849 Love

notes that "there were a great many of those who were constant inmates of the prison carried off by the cholera", and he records, "As cholera is very fatal in the town at present I have stopped the visits of the friends and relatives of prisoners during the prevalency"; but by October, "cholera having subsided", visits are resumed. In 1854 a case of smallpox is mentioned. The Governor records occasional births in the prison, and, as at Perth, states when children can safely be removed from their mothers. Several are so listed in March 1854.

At Greenock Prison the Governor had quite a lot of trouble with his staff. In December 1848 a female warder "gives up her situation on account of some difference between her and the matron". In March 1850 the housekeeper is dismissed for "irregular conduct"; and in October the housekeeper is dismissed "for keeping up money belonging to a female prisoner". In July 1851 another housekeeper gives up because of her health and in April 1852 the housekeeper resigns on account of "some dispute with matron", as the Governor records a little wearily. In November 1853 a female warder "gives up her situation being unable to live with the matron". The male warders proved as unreliable. In November 1853 a watchman "having come on duty in a state of intoxication gave occasion to put him out by force; I dismissed him from his office". In January 1854 a watchman "came on duty in a state of intoxication, in consequence of which he gave up his position". In May a "warder gave up his situation; he considered it too confined for a married person". In June, a watchman who had been there only a few months "gave

up his situation as he would not get an advance of wages". In September, "two warders gave up to go to Australia", and in November a watchman "gave up his situation as he did not like the place". In November 1856 a warder "gave up as he had taken a shop which he was going to open".

Love had other difficulties to contend with. In 1865 he complained about the bad living conditions and insecurity of the prison. In March of that year the front boundary wall collapsed owing to undermining by excavations made by the tenement owner opposite. The main wall then fell into the excavation leaving the prison quite exposed.⁵² A night watchman had to be posted on the breach day and night until a barricade could be erected. In May, the North boundary wall collapsed, was rebuilt and fell down yet again. In 1869 a new prison was built in Nelson Street, adjoining the Court house, was occupied in 1870 and continued in use until 1910.

Very occasionally in the depressing entries in the Governor's Journals a small ray of light breaks through. It is pleasant to read in the Perth Journal for October 26, 1846 that one of the "stiff boys" of an earlier entry, aged 15 and having had five prison sentences, is now liberated and "went to Woolwich having received a situation on board a vessel lying there", and that he received "11/- in addition to ordinary travelling expences which would have been allowed him on his liberation, by order of the Sheriff in consideration of good conduct while in General Prison - expected to do well".

Part IV Transportation

An interesting correspondence to be found in the Record Office⁵³ illustrates the way unfortunate, sick, Scottish convicts under sentence of transportation, could be shuttled back and forth between Scotland and Millbank Prison, unwanted by all. A note from Whitehall in June 1847 refers to the rules for regulating Millbank Prison, that it shall be lawful for one of the Secretaries of State to direct the removal to Millbank Prison of any convict under sentence of Transportation but the convict must be pronounced fit by the Doctor at the prison before leaving it, and if, when examined at Millbank, he is found to be unfit he will be sent back to his original prison.

There are frequent protests by the Governor at Millbank to the Sheriff of Edinburgh stating that the medical certificates accompanying male convicts received from various gaols in Scotland were not in accordance with terms of the Secretary of State's warrant. Reports of 1847-48 cite cases of ill-treatment and death among those Scottish prisoners sent South. A letter from the Millbank doctor in 1847 asserts two female convicts brought from Banff are not fit to be received into Millbank as they are too old and sick for labour in a penal colony, while an angry letter from the Clerk to the Prison Board in Banff insists they are perfectly able-bodied, though one is "adept at feigning illness", and they are now back at Banff where there is no room for them. An accompanying letter from the Sheriff of Banff adds his complaints.

There is a letter of January 1848 from the man who brought 29

convicts from Glasgow, Ayr, Paisley, Lanark, Hamilton, Kirkcudbright, and Jedburgh to Millbank. From Glasgow they proceeded to Granton in the usual manner per Railways, Omnibuses and Van, and were shipped on board of the Royal Adelaide steamer. The voyage took two and a half days and all "enjoyed good health (Sea Sickness Excepted) with the exception of one who took three convulsion fits", but recovered by the time they reached Millbank. One of the party was rejected as ill and sent back to Glasgow. Again in January 1848, a Sheriff's Officer took 31 convicts from Edinburgh by steamship "Leith", and reported that "As the convicts had to abide a Medical Examination before a receipt would be given for their bodies, I was appointed to return next day". One man was rejected and returned.

Sometimes the convicts were too sick to undergo the voyage north again and were sent to Millbank hospital. Thus in January 1848 the doctor at Millbank reported on the state of "Patrick McGinty being in the last degree of Emaciation and debility", and "very great danger would attend his removal from London to Glasgow". His letter is accompanied by one from the Millbank Governor to the Sheriff of Edinburgh, couched in strong terms, "I cannot avoid expressing my regret that convicts should be sent to this establishment under circumstances which oblige me from motives of humanity to act in violation of the regulations framed for my guidance". Next comes from the Crown Office at Edinburgh notice of the inevitable inquest on McGinty and that proceedings

were to be taken against the Glasgow doctor who authorised his removal South.

In March, a letter came to the Lord Advocate, at the direction of Grey, Secretary of State, from the Inspectors of Millbank prison reporting on the improper removal of a convict since deceased, from Dornoch Gaol to Millbank, and calling the attention of the Secretary of State to "the objectionable mode in which Convicts are generally removed from Gaols in Scotland to that Prison". They felt it their duty to report it "as another instance of the want of proper care on the part of the officers entrusted with the removal of Transports from the Scotch Prisons". They added that Scottish Female Convicts are never accompanied by a Female Warder on the journey South but are under the supervision of a male assistant which is "highly improper". In March there is an extract from the journal of the Millbank medical superintendent, saying that the Dornoch prisoner is dying. He was brought from Dornoch to Aberdeen via Inverness, three nights on the way, "without going to bed, had no place to lie down on, but passed these nights in Irons with scarcely any fire, being all the time chained to a female convict ... During the first day he made the journey in an open Gig and the second on the outside of a coach.... The weather at the time was very severe". In April the Lord Advocate takes the matter up with the General Prison Board who write to the Sutherland Prison Board. They seek to justify the treatment of the prisoner, now dead, saying he was convicted of horse-stealing and the female convict of house-breaking, declaring

they were only chained together at Aberdeen in case of attempts to escape when going on board in the dark. They add in further justification that the female convict "was a person very different from the general run of her sex ... an uncommonly stout muscular woman", and quoting a statement from the keeper of the Prison to the effect that she was unmanageable and "on one occasion she threatened to knock out the brains of the Matron".

It is difficult to escape the conclusion that there was a good deal of, not necessarily deliberate cruelty, but certainly lack of humane care at the Scottish end of the transportation journeys. Still the dominant feeling in Scotland was "Get rid of the offender at all costs, in whatever state he may be, to the next parish, the next county, or beyond the seas".

Meanwhile, the transportation chapter in our history was drawing to a close. The Australian penal colony had had a turbulent existence and transportation became unpopular both at home and in Australia. In Britain there was a growing tendency to condemn transportation as wastage of man power and ask why convict labour should not be utilised on public works in the U.K. There was some doubt too, as to whether transportation was in fact a punishment. The ubiquitous Sidney Smith argued that it was not and that neither was it a deterrent. Many were inclined to agree with him, further stating that transportation had proved to be in no sense reformatory.

Objections were considered by a Select Committee 1837 which proposed that transportation to Australia be discontinued as soon as possible and that confinement with hard labour at

home or abroad be substituted. This was impossible at once, for there were far too few prisons and the hulks were already unhealthily overcrowded. The decision was reached to stop transporting convicts to New South Wales but to continue it to Van Diemen's Land (Tasmania). There savage punishments and inhuman tortures were commonplace.⁵⁴ If transportees escaped and returned before serving their term, they were liable to be executed.⁵⁵

Grey, the Colonial Secretary, in 1846 suspended transportation for two years and instead, sent all transportees to undergo a period of separate confinement at home in an institution like the new Pentonville. Transportees between 18 and 35 years spent 18 months in solitary confinement there and were taught a trade in their cells. In 1857 the 18 months was reduced to 9 months for all sentences of penal servitude. There are many instances of convicts coming from prisons all over the U.K. to do their 12 or 18 months probationary confinement in solitary at Perth and then being sent South to the hulks to await transportation.⁵⁶ When their solitary confinement was over, convicts were sent to labour in association on public works in Britain, Gibraltar or Bermuda, then on ticket of leave to any colony who would take them. This plan was the origin of the sentence of penal servitude which was to dominate British penal treatment at the end of the nineteenth century. But in 1852, Tasmania, swamped with the British criminal classes, firmly refused to accept any additions, and Bermuda and Gibraltar with more than 8,000 convicts already, clearly could not absorb many more. Western

Australia continued to be used, but in 1867 the last convict ship sailed there.

In 1853 the Penal Servitude Act had been passed, substituting sentences of four years penal servitude for the existing ones of seven years transportation. A frantic hunt revealed no new dumping-ground for criminals - the Falkland Islands, Labrador and New Guinea were all tried unsuccessfully. The discharge of many ticket of leave holders in Britain led to public unease and agitation, and the second Penal Servitude Act, 1857, was the result. It recommended that the terms of Penal Servitude should correspond exactly to the previous sentences of transportation and that there should be remission if behaviour warranted it; one sixth remission in a sentence of three years and one third in a sentence of fifteen years or longer. This Act continued in force until the Criminal Justice Act of 1948.

Part V. Towards Centralisation

When the general public in the 19th century thought about prisons at all, it was in conformity with the widely held opinion that prison must be oppressive and punitive. As this was in line with the views of officialdom, it was only when some particularly scandalous incident of prison life found its way into the Press that any public interest in the treatment of prisoners was aroused. Such an incident was the suicide by hanging in Birmingham Jail in 1854 of a 15-year-old boy to escape further tortures by the inhuman governor. Maconochie, the former Superintendent of Norfolk Island, had been Governor of Birmingham Prison from 1849-51 and had introduced the marks system he had started in Australia. His methods were not popular with the justices, who forced him to resign and replaced him by the Assistant-Governor, a man of savage propensities. Now began a period of incalculable suffering for the Birmingham prisoners under the new Governor Austin. Ignoring all the prison rules, Austin carried out a reign of terror over his unfortunate charges. Failure to complete the stipulated 10,000 revolutions of the crank was punished by starvation.⁵⁷ Thus enfeebled over-tasked bodies found it impossible to labour at the crank, which led to more savage punishments such as removal of bed and light, flogging, the black hole, solitary confinement, and, most feared of all, the frequent use of the strait-jacket, an instrument of medieval torture. For "being refractory" covered the slightest misdemeanour, and many became insane, some dying under the bestial treatment

they endured.

After the Royal Commission's report on the Birmingham atrocities, and the publication in 1856 of Charles Reade's It's never too late to mend, in which the daily tortures inflicted on hapless prisoners from the age of 9 upwards were vividly described, the public became uneasy. Reade's almost unbearably realistic exposure of jail abuses forced people to accept the unpalatable fact that such barbaric cruelties could be practised in prisons under the care of local and unpaid visiting magistrates. This realisation led to a growing demand that all prisons should be placed under national control.

We saw in Part I (p.139) that by the 1839 Prison (Scotland) Act a General Board of Directors was empowered to erect a central prison at Perth, a General Prison for long-term prisoners, and that, although administration was still in local hands, the central government was strengthened by the appointment of a Board of Managers. In 1839 there were 178 locally administered establishments, many of which were in a deplorable condition and did not possess even the rudimentary standard of accommodation or classification. Gradually the number of these had shrunk until by 1860 many were closed. "The decision to make certain local prisons good and sufficient was really the death of the idea of centralisation at Perth."⁵⁸ And the Prisons (Scotland) Administration Act 1860⁵⁹ abolished the General Board of Directors of Prisons in Scotland and brought Perth General Prison under a body of managers, i.e. the Sheriff Principal of the County of Perth, the Inspector of Prisons for Scotland,

the Crown Agent in Scotland, and one salaried manager appointed by the Queen. The General Prison was to detain prisoners sentenced in Scotland and was also for "Reception and Detention of such Convicts under sentence of Order of Transportation or of Penal Servitude as Her Majesty may please to direct to be removed to such General Prison, and sentences of 9 months and more were to be served in General Prison".⁶⁰ Under the Act, 21 prisons were closed, seven of these being rebuilt.

But it was not until 1865 that a Prison Act took away many of the powers from local authorities, though it still held that deterrence through severity was the chief aim of prisons, and upheld the silent system and the separation of prisoner from prisoner; hard bodily labour on the crank and treadwheel; the use of chains and irons, dark cells, bread and water, and flogging as necessary punishment. This Act divided hard labour into Class I, including treadwheel, short drill, crank, capstan, stonebreaking, or equally hard "bodily labour", and Class II, which incorporated such other description of bodily labour as might be appointed by the justices. It was not until the passing of the 1877 Prison Acts that the prison system was nationalised by bringing all local prisons in the U.K. under the full control of the central government. Thus began the modern British prison system.

Despite the volume of legislation, the busy activity of conflicting ideologies, the milestone of the end of transportation, and the centralisation of prison authority,

the period ends as it began to the extent that the same emphasis is placed on retribution and deterrence; useless hard labour of the crank and treadwheel, and irons and flogging, are still commonplace, while the public remains largely indifferent. But, on the other hand, we have moved from the squalid, casual promiscuous prisons of the congregate system, to the rigid, inhuman, repressive silent system, with the accent implacably on the separation of prisoner from prisoner in the grim new fortresses where the men immured slowly go mad.

CHAPTER VI - 1877 - 1908

Part One

The Prison Acts of 1877 swept away the complicated system of locally managed prisons, and brought them under the central authority of the Home Secretary. The convict prisons such as Dartmoor and Portsmouth, where sentences of penal servitude were served, were already under the central authority. The structure of the prison system, so set up, lasted until the Criminal Justice Act 1948. There have been only slight changes in the legal machinery of imprisonment in general since then, although the whole position of children and young persons with regard to imprisonment has been fundamentally changed.

Until the formation of the Howard Association, 1866, (united in 1921 with the Penal Reform League to form the Howard League for Penal Reform), improvements in prisons were achieved by the efforts of a few individuals. "The greatest single reform in the history of the British penal system which made the incorporation of all John Howard's schemes possible, but which he did not explicitly propose himself, was the creation of the Prison Commission in 1877, responsible for all prisons..."¹ Howard, through his inability to work with others, could be said to have sabotaged the effort to have new prisons built.² There was no organisation to implement Howard's plans, and prisons remained in the hands of local authorities despite the public sympathy he had roused. Now the 1877 nationalisation ensured the enforcement of a common policy in all prisons. "It also gave those who were trying to promote reform only one body to

convince; previously, ideas had been touted from one uninterested county authority to another, usually meeting with an impassive obstinacy."³

It must be remembered that Howard and other reformers had always stressed the physical conditions of the prisons, and these in Howard's time were still mainly lodgings where prisoners were kept awaiting transportation or other punishments, and only debtors and political prisoners expected to be incarcerated for years. Howard was not primarily concerned with the purpose of imprisonment. But by the time the Prison Commissions for Scotland and England were appointed in 1877, the official view, as well as that of the general public, was that only by making gaols places of harsh punishment could wrongdoers be deterred from returning to prison. The huge new prisons which shot up in the mid-nineteenth century to cope with the influx after the end of transportation, were based on Howard's ideas in design. But it has not been properly understood that Howard never anticipated prisoners being shut up there for years or that such buildings might be needed to serve a remedial rather than a revengeful purpose. If Howard had been able to envisage social training in prisons, it is possible they might have been constructed quite differently.

Coupled with the trend towards harsher treatment as a deterrent to wrongdoers there was another factor contributing to the prisoner's sense of isolation and separateness from the rest of the community. Before 1877 and the takeover of control of all prisons by the Home Office, inspectors' reports had been published yearly. But after

that date these reports were no longer public, and so a valuable stimulus to public interest was lost. Despite the appointment of bodies of visitors, the prison system became a closed bureaucracy and so it has remained. Although since the early 1920s it has been the policy of the Commissioners to allow the public in, yet the unification brought about by the Prison Acts 1877 lessened the public interest and the sense of public responsibility.

To elaborate: once any organisation comes under bureaucratic control it tends to become much more rigid and conservative: civil servants are there to implement regulations. There is no interplay of ideas, no fresh thoughts brought to bear on problems. Everything is done by the book, therefore there tends to be very little development. Members of the public who may be interested in the subject are handicapped by the difficulty of getting access to the facts because civil service departments are notoriously secretive.

But the reverse of the coin shows a contrary tendency. For although prisons, even of the same class, still had great variations in regimes, yet on the whole the results of the 1877 Acts were good. For only by uniting prisons under one system were possibilities opened up of better organisation of prison labour and the ending of the worst scandals of some local jails.⁴ The adopting of one system makes sure that standards laid down are adhered to, but the danger is that these standards tend neither to change nor to develop.

That not all were in favour of nationalisation of prisons can be

seen from a letter of March 1870 to V.D. Broughton from Secretary Bruce, saying: "Many practical objections would be found to placing the General Prison at Perth under the Directors of English Convict Prisons, as well as to a withdrawal of the supervision now exercised by the managers over the local prisons."⁵

The number of prisons in Scotland had been by 1877 reduced to 56, and their administration was by ^{the} Prisons (S.) Act of that date transferred from the local authorities to the State, and their maintenance provided for out of moneys voted by Parliament. All local Prison Boards were abolished. The Act says that rules for the administration of prisons may be made by the Secretary of State at any time. Note that under previous legislation local authorities were the executive administering prisons, while the State controlled and inspected their administration. Now under the 1877 Act the State was to administer, while local authorities through the visiting committees were to inspect independently and report to the Secretary of State.

The leading provisions of the Scottish Act were:

- S.4: prisons and prisoners were to be maintained out of public funds.
- S.5: prisons were vested in the Secretary of State, as well as the appointment of prison officers and the control and safe custody of prisoners.

SS.7-13: provision is made for the appointment by the Crown of a body of Prison Commissioners not exceeding three, of whom two may be salaried. The Sheriff of Perthshire and the Crown Agent of Scotland were also to be Commissioners ex officio. The general superintendence of prisons was vested in the Commissioners, subject to the control of the Secretary of State, and inspectors and officers were appointed to assist them. An annual report by the Prison Commissioners with respect to every prisoner within their jurisdiction, was to be laid before both Houses of Parliament, and the report had to contain particulars as to the various manufacturing processes carried on in each prison. A yearly return is also made by the Commission to Parliament of all punishments inflicted in each prison.

SS.14-16: provision was made for the annual appointment of a visiting committee for every ordinary prison, to report on any abuse, hear complaints and observe conditions. Any sheriff or J.P. having jurisdiction in the place where the prison is, may enter the prison and examine the conditions of the prisoners (unless under sentence of death).

S.17: all local obligation to maintain prisons is ended.⁶

"Thus since the passing of the Act of 1839, 122 county prisons have been closed in Scotland, leaving in existence in 1877, 56 of the 178 prisons coming under the administration of the General Board".⁷

There was a serious defect in Scottish prison organisation until the 1877 Act, and that was a lack of power "in the arrangements for adjusting available accommodation to the fluctuations in population and crime"⁸ - such as when a prison became overcrowded, while a few miles off one might be half-empty. There ~~had been~~ provisions in the Acts of 1839 and 1860 for counties contracting a union or partnership for prison purposes, but this was never done. And it was not in the power of the Board under the 1839 Act, nor of the Secretary of State under the 1860 Act, to close the only prison in a county though it might be subject to any limitation in classes of prisoners for which it remained open. Under the 1877 Act 5 prisons of this class were closed (Kinross, Stonehaven, Banff, Nairn and Peebles).⁹

The 1878-79 Report points out:-

"As to all prisons in England except the convict prisons, and all prisons in Scotland except the General Prison, it may be counted that the leading feature in the Acts of 1877 is the inversion of the old order, in as far as under previous legislation the local authorities were the executive, administering the prisons, while the Government watched and inspected their administration; now the Government administers, while the local authorities in Scotland, in the shape of visiting committees, watch and inspect, the Government also inspecting for its own purposes."¹⁰

The Report stressed that:-

"It is desirable, on constitutional grounds, that the interior of prisons should be seen by others besides those who rule in them, and it is better that those who visit prisons should be responsible people with fixed privileges, than that they should come casually, ... from the community at large".¹¹

As regards the important subject of the difference between English and Scottish prisons, the Report says, "In the whole question of comparison between the prison service in England and in Scotland, consideration must be allowed for the influence of the English Act of 1865. ... It had in a manner "the advantage of being prepared under higher conditions of civilization in prison treatment. By the revolution in penal management, drawing the convicts from the penal colonies, and decreeing that they should be treated at home under the penal servitude system, the English reformation was thus accomplished by the aid of experience in that class of penal discipline that is known to all practical people as the most difficult. As the prison service in both countries is now in the hands of one master, we may feel sure that any practice found effective and valuable in one of them will find its way to the other".¹² The Report adds that "In any comparisons between England and Scotland, involving the joint elements of efficiency and economy, account must be taken of the vast districts of waste and thinly peopled districts of the Highlands and Islands to the West and North".¹³

It is important and "always necessary, when comparisons financial or otherwise are made between the prison system in England and in Scotland, to take into account that in the General Prison a certain portion of the class detained in England in local prisons and charged in local taxation, viz prisoners sentenced to long periods of imprisonment, - are in Scotland detained in the General Prison at the charge of a parliamentary vote".¹⁴

The powers in relation to prisons in Scotland conferred on the Secretary of State for the Home Department, by the Act of 1877, were transferred to the Secretary for Scotland by the Secretary for Scotland Acts 1885-89.¹⁵

Immediately after the 1877 Acts the five English prison commissioners under the chairmanship of Sir Edward du Cane (1877-95) started to decide what prisons to close and to reorganise the local prisons with the object of uniformity in prison management, since there were gross disparities in the existing regimes. Du Cane, who had organised prison labour in Western Australia from 1851-56, set to work with determination. He held deterrence and strict discipline to be the dominant aim of punishment and he was convinced that the separate system was better than the silent; he strongly opposed association. In this latter attitude he had the support of the Secretary of the Howard Association. He was determined that all sentenced equally should undergo equal punishment. How different from the 18th and early 19th centuries when money bought comfort, drink, food, and female companionship.

At this time the technique was for the prisoner to be put at once into bad conditions and be offered better only if his industry and good conduct merited it. The modern rule is to give the prisoner from the beginning of his imprisonment, all the privileges which in the late nineteenth century had to be earned, and to use the threat of losing them to ensure good conduct and industry. The Penal Servitude Act, 1853,¹⁶ had introduced the Progressive Stage System. The sentence in a public works prison was divided into stages, each carrying with it increasing privileges. A convict could pass through four stages according to the number of marks awarded, and could forfeit privileges and sink to a lower stage. In the first stage the prisoner had to work 10 hours daily in the first class hard labour, of which 6-8 hours were on the crank or treadmill, he had to sleep on a bare plank board, and he earned no money. In the second stage the prisoner was employed as in stage one for a month, and was then put on hard labour of the second class, sleeping on a bare plank bed two nights weekly and the rest of the week on a mattress; he could earn up to 1/- per week; he could be taught and have exercise on Sundays. In the third stage he was employed in second class hard labour, he slept on a bare plank bed only one night weekly, earned not more than 1/6d., had lessons and Sunday exercise and library books in his cell. In the fourth stage he always slept on a mattress, could earn up to 2/-, had the same privileges as in the third stage, could receive and send a letter and have a twenty-minute visit.

This system became characteristic of Penal Servitude and was to last until the Prison Act 1898. The Star Class system,

introduced as a result of the Royal Commission of 1878, segregated first offenders from others. But with du Cane, all cells were made as comfortless and dreary as possible. "Prisoners come out ... sometimes insane, often unemployable, nearly always bitter and resentful, with an average (at least for the three years preceding 1878) of 7d in their pockets ... undeterred and unreformed".¹⁷

Then came the Gladstone Report in 1895. The committee which drew it up praised the strong centralisation of authority which had been entirely successful in the direction of uniformity, discipline and economy, but went on to point out that the danger of the highly centralised system was that the prisoners had been treated too often as worthless members of the community, and the large number of recommitments gave cause for concern. The committee held that prison discipline should be designed "wherever possible to turn them out of prison better men and women physically, and morally than when they came in".¹⁸ This was clearly not being done, so the committee recommended that useless labour should be abolished; that cellular confinement should be limited; and that du Cane's severe regime should be relaxed.

The Gladstone Report is a landmark in the history of British penal reform chiefly for three reasons. 1) Consideration by the Committee of the fact that prison conditions might be designed to reform the criminal. 2) The Committee's recognition of the need to improve conditions inside prison, and this included abolition of useless labour of crank and treadmill, reduction of solitary confinement, better food, more books and education, and work for prisoners in local prisons. "Prison treatment should have as its primary and concurrent objects, deterrence and reform".¹⁹ This attitude was very different from the hard line taken by the 1863 House of Lords Committee. The equalling of deterrence and reform supplanted the hitherto

prevailing belief that deterrence was the paramount aim of a prison sentence. This in itself was a great step forward. 3) The Committee's recognition of the problem of recidivism. Till the Gladstone Report there had been no serious attempt to treat the recidivist (a problem still unsolved by us today.)

The Prison Act 1898 incorporated most of the Gladstone Committee's recommendations. It abolished unproductive hard labour of the first class - of crank and treadwheel - and ordered that the first 28 days of hard labour must be done in separation; thereafter the hard labour prisoners would work in association with ordinary prisoners, in reversion to the Silent System recommended by the Report. For the first month of a hard labour sentence the convict had to sleep on a plank bed with no mattress. Section 6 of the Act empowered the Courts to order that a sentence of imprisonment without hard labour should be spent in the 1st, 2nd, or 3rd divisions, and in the absence of any order, in the 3rd division.²⁰ The Act also limited the power to order corporal punishment for serious breaches of prison discipline (a power which lasted until the Criminal Justice Act of 1967.) Provision was made for remission of part of the sentence for industry and good conduct in cases of imprisonment as distinct from penal servitude.

The Acts also contained provision for the Home Secretary to make

rules for the government of local and convict prisons, with the result that further legislation concerning the conditions and organisation of prisons was made unnecessary until the 1952 Prison Act.

Sir Evelyn Ruggles-Brise, chairman of the Prison Commission from 1895-1921, was appointed in succession to du Cane the month the Gladstone Report was published. His years in office saw a vast number of changes in prison conditions effected by alterations in rules and standing orders. Steps were taken to abolish the crank and treadwheel even before the abolition of the first class hard labour by the Act of 1898. Except for the first month of a hard labour prisoner's sentence, work in local prisons, as in convict prisons, after the set period of separate confinement came to be in association. The period of separate confinement which started penal servitude sentences was reduced. Prison diet was improved. Prisoners had weekly baths instead of fortnightly. There were more visits, letters and books, and an improved system of education.

Ruggles-Brise's period as chairman is important for witnessing a "significant development in the avoidance of prison as a punishment and the evolution of alternative penal or corrective measures".²¹ He held too that prison should be regarded as the last rather than the first resort. He was largely responsible for the Probation of Offenders Act, 1907, the first real probation statute in Britain. (There had been earlier examples in the U.S.A., and in the 1820s in England magistrates had sentenced juveniles to a day's imprisonment

on condition they returned to their parents or masters to be supervised).²²

Probation is the "suspension of punishment conditional on there being no further offence for a period during which the offender is placed under personal supervision".²³ Previous English statutes had permitted conditional suspension of punishment, but before 1907 no statutory provision was made for supervision. The Act allowed for the conditional release of old lags as well as for first offenders.

In 19th century Scotland and England one of the worst aspects of the penal system was the imprisonment of children. While reformatory and industrial schools had proved valuable as alternatives to imprisonment, it was not until the Children's Act, 1908, that imprisonment of those under 14 was prohibited, and imprisonment of those between 14 and 16 allowed only by special certificate of the court. At present, no court can send the under 17s to prison, and before someone between 17 and 21 is sent the court must be satisfied that there is no other way of dealing with him.²⁴

But despite these worthwhile advances in the improvement of the prisoner's lot there was still much hardship in the conditions under Ruggles-Brise. For the convict's head was still cropped, his prison garb was still an "ill-fitting dress of shame" covered in broad arrows, and although work was in association there was little recreation in association, and often more than 17 out of the 24 hours were spent in the cell. And even though the rule of silence was no longer absolute it

was an added misery.

Oscar Wilde, who served two years in Reading Gaol (1895-97) spoke for many inarticulate sufferers when he described the futile, meaningless "work" the prisoners did:

We tore the tarry rope to shreds
 With blunt and bleeding nails;
 We sewed the sacks, we broke the stones,
 We turn the crank or tear the rope
 Each in his separate Hell. 25

Wilde, like many before and after him, comes to the conclusion that:

The vilest deeds like poison weeds
 Bloom well in prison air;
 It is only what is good in man
 That wastes and withers there. 26

He was appalled at the treatment meted out to young children in prison - appalled that they were there at all. In a letter to the press, Wilde declared "The way that children are treated at present is really an outrage on humanity and common sense".²⁷ Shut up in its dim cell for 23 hours a day, often terrified, always hungry. and frequently unable to eat the "coarse, horrible" food offered to it, a child would sometimes rouse the pity of a warder who might give it something edible and lose his job for his pains. Wilde urged that no child under 14 should be sent to prison, but if it must be there it should spend its days in the schoolroom and workroom and its nights in a dormitory and have far more exercise. In the same letter Wilde pled for the weak-minded prisoners who, by ill-treatment,

became insane, although held by prison doctors to be shamming and consequently often punished by brutal birching.

In another letter entitled "Prison Reform", and sent also to the "Daily Chronicle" (March 1898), Wilde writes on the subject of the 1898 Prison Bill about to be read, and points out what reforms in "our present stupid and barbarous system are urgently necessary".²⁸ He declares that the suggested increase in the number of inspectors and prison visitors would be useless as such visitors only go to see prison regulations carried out, not to help the prisoners. He stated that the necessary reforms were (1) improvement of the food which was revolting and "just enough to sustain, not life exactly, but existence",²⁹ and which "in most cases consists of weak gruel, suet and water",³⁰ leading to permanent diarrhoea in many prisoners. (2) Improvement of the appalling sanitary arrangements and especially the abolition of the disgusting custom of "slopping out" (still prevailing). (3) Better ventilation in the cells: for 23 hours a day the prisoners breathed foul air. (4) "The present prison system seems almost to have for its aim the wrecking and the destruction of the mental faculties ... Deprived of books, of all human intercourse ... condemned to eternal silence ... brutalised below the level of any of the brute creation",³¹ is it any wonder, Wilde asked, that many men go mad in prison? He pointed out that for the first three months in prison no books were allowed save for a Bible, prayer-book, and hymn-book, and after that the books supplied from the prison library were of very poor quality. He wanted prisoners to be allowed more visits than the

twenty minutes four times a year, more letters than the four a year permitted. He considered prison chaplains to be "entirely useless ... well-meaning, but foolish", and held an equally low opinion of prison doctors, calling them "brutal in manner, coarse in temperament, and utterly indifferent to the health of the prisoners or their comfort".³²

The vast majority of prisoners through the ages have always been of low mentality, often illiterate, and quite incapable of describing their plight vividly or even coherently. So that when a gifted writer like Wilde or a highly intelligent and articulate man like W. B. Neville falls foul of the law and puts his experiences on paper either in prison or on release, their words have more effect, more influence, than those of prison staff, visitors, or politicians. The general public lend an ear. Wilde's strongly worded descriptions of the miseries of prison life near the turn of the century, coming as they did from one of the most brilliant literary figures of the day, who had himself just emerged disgraced from two years' imprisonment, must have made many readers of the "Daily Chronicle" ponder seriously.

Hard on his heels came W. B. Neville, a peer's son, sentenced in 1897 to five years' penal servitude for uttering promissory notes. He did 3 years and 9 months in Parkhurst and Wormwood Scrubs and was released in November 1901 on a ticket of leave. Neville was one of the very few prisoners who could express themselves well on paper, and his picture of "life inside" is a full and comprehensive one.

As regards governors and warders he considered them good

on the whole (as did Wilde). "It was a wonder to me that they got such a good class of men to join the prison service. ... Many ... are old soldiers or old sailors, and the only thing that induces them to join the service, I suppose, is the prospect of retiring on a pension. ... Their work is incessant; their hours are very long; and their pay is decidedly not too high, ... their responsibility is very great".³³ When Neville was released from Parkhurst he, a Roman Catholic, left about 100 Roman Catholics out of 800 prisoners; the regular Roman Catholic chaplain got £100 a year, considered by Neville to be too little as he paid daily visits and had many incidental expenses such as his own cab to the jail. Neville felt that the half-hour twice weekly given to teaching illiterate prisoners the three Rs was far too little, and that a good opportunity was missed for making school a useful instrument of discipline and reform. He thought "the perpetual silence is most infamous. ... When I first went to Parkhurst no talking was allowed under any circumstances, but under the new regulations of April, 1900, men who had reached the 'blue-collar' stage, that is, who have done three years in prison with good conduct were allowed to walk and talk together for about three-quarters of an hour on Sunday afternoon".³⁴ He hoped that this concession would extend in time to weekdays. (In local prisons also, talking was allowed only once weekly during exercise and that after six months in prison).

Neville is as enraged as Wilde on the subject of prison diet. The total absence of all green vegetables from their diet induced such

a craving in the prisoners that they would tear up and devour green weeds while on exercise. An enormous number of men suffered from skin diseases, boils and rashes. Many were taken to hospital suffering from self-inflicted wounds in order to share in the better fare for the sick. The Home Secretary 1891 had said: that the ordinary prison diet was not to be regarded as an instrument of punishment, but that prison diets must not bear too favourable a comparison with the diets of free labourers in the outside world or of the inmates of workhouses. There was a constant fear lest prisoners be found to be better off than their counterparts outside.

Until 1898 the ordinary prison diet had indeed been regarded as an instrument of punishment. Thus the Committee of 1878, on whose recommendations all prison diets were based up to the partial adoption of the Report of 1899, laid down that to give a diet necessary to the maintenance of health during the longer terms would be to forego an opportunity of inflicting salutary punishment. Thus starvation was to be added to imprisonment and labour as an additional punishment. It was the diet based on this 1878 Report (the same as the old scale of 1864) that was in force during Neville's time at the Scrubs and Parkhurst until just before his discharge, and which Wilde endured during all his imprisonment. Neville found his food insufficient, often "repellent" and bad, and never but "an instrument of punishment".³⁵ Too often

contractors sent in rotten potatoes, bad flour and sour bread. There was no redress and many men became wrecks. The new diet came in just before Neville left, but was only for hard labour parties, so the printers, tailors, shoemakers were excluded and put on a new light labour diet. Neville considered the 1899 Report on Prison Diet to be good. He gives tables of, first, the Old Dietary menus under which each convict was given 145-168 ozs. of bread weekly, and one pint of tea in lieu of gruel if he had served part of his sentence.³⁶ Neville then gives the New Dietary introduced in 1901. Each convict under it had 168-196 ozs. of bread. Neville pointed out that the new dietary (although like the old, leaning heavily on bread and potatoes) meant that prisoners' health improved and violence decreased. "Punishment by hunger, which prevailed from 1864 to 1901, was not only a crime, but a colossal blunder. It entailed... suffering and... injury on tens of thousands of helpless wretches."³⁷

William Sievwright, for 30 years a Scripture reader in Perth General Prison, says in 1894 that the aim was "to maintain the prisoners in ordinary health - that pampering may be avoided on the one hand and hurtful privation on the other. Many, no doubt complain very unreasonably, I fancy that such a vile class should be so well cared for. But it

should be remembered that even criminal prisoners are not sentenced to be allowed to live in personal neglect and filth nor to be starved to death".³⁸ Sievwright describes the diet at Perth, where persons under sentence of imprisonment not above 3 days had for breakfast 1 pint of oatmeal gruel, for dinner 1 pound of bread, for supper 1 pint of oatmeal gruel. Ordinary prisoners, Females and Juveniles, or convicts in the first or Probationary period of discipline, had for breakfast 8 ozs. of oatmeal made into porridge, with $\frac{3}{4}$ of a pint of milk; for dinner 2 pints of barley broth with 8 ozs. of wheaten bread; or $2\frac{1}{2}$ lbs. of potatoes with $\frac{3}{4}$ of a pint of milk and 4 ozs. of wheaten bread; for supper $1\frac{1}{2}$ lbs. of potatoes with $\frac{1}{2}$ pint of milk or 4 ozs. of oatmeal made into porridge with $\frac{1}{2}$ pint of milk. These convicts, in passing the first or probationary stage, found their dietary somewhat improved. They got 8 ozs. of bread with $\frac{1}{2}$ pint of tea for breakfast and for dinner on 4 days of the week 6 ozs. of meat + 1 oz. of cheese and either 6 ozs. of bread + 1 lb. of potatoes or 12 oz. wheaten bread. The menu of the adult males who were ordinary prisoners consisted wholly of porridge, potatoes, bread, milk and a little barley

broth - no meat, cheese or tea. Male convicts not in probation got an additional bonus of 12 ozs of fresh fish + $\frac{1}{2}$ a pint of fish soup for one day's dinner, and $\frac{3}{4}$ pint of coffee nightly at supper. Male convicts on hard labour at public works had a dietary rather better.³⁹

Neville gives a grim account of the dreary and wearisome prison routine. On weekdays, with the exception of Saturdays, the prisoners rose just after 5 a.m., slopped out, and breakfasted locked in their cells. Then came chapel, parade, search, work as cooks, blacksmiths, tailors, book-binders, farm-labourers. At 11 they were searched again, work till 5, and supper in cells. At 6.40 they were locked up for the night, but were not allowed to go to bed until 8 at lights out. On Saturdays there was no work in the afternoon, so when the men went to their cells for dinner at 11.10 they did not leave them till 9 a.m. on Sunday, a total of 22 hours solitary.

The prisoners had a weekly hot bath and shave, and every fortnight their hair was clipped down to one eighth of an inch. Each was given a pencil and slate in the cell but as many were illiterate Neville wondered how they could endure the hours. During the first year, two visits of 20 minutes were allowed, and two letters could be written and received. These were increased in the second year to 3 visits and 3 letters, and in the third year to 4. After that the allowance was a 30 minute visit every two months, and letters every two months. On discharge the prisoner got a suit of clothes, hat, and boots, valued at £1.17.6, but even if he had served twenty years the maximum he would find himself with was £6. As Neville points out, after a long stretch, a man usually had no home or friends and it was often impossible to keep straight on £6. "It would not involve a great outlay, ... if every prisoner were enabled to earn a small sum a year during the whole of his term, and would certainly keep many from coming back who do so now from sheer destitution."⁴⁰

Petty rules exacerbated the prisoners' outlook. When Neville arrived at Parkhurst photographs of family could be sent but kept for only 24 hours. Later the prisoners were permitted to keep them. No toothbrushes were allowed until after at least a year!

As regards punishments, Neville did not think them excessive, consisting as they did of solitary confinement, loss of privileges or of remission, bread and water diet. Eighteen days was the maximum given for the latter, and was not continuous, being divided into intervals of three days alternating with equal intervals of low labour diet. No labour was expected while a prisoner was on a bread and water diet. For very serious offences such as trying to escape, additional punishment of parti-coloured dress and chains was given; yellow and drab for attempting to escape and drab for assaulting officers. For the latter offence the birch or the cat could be inflicted. The possession of paper and pencil and letter-writing was punished by a long spell in solitary and a big loss of remission. Neville thought the cat was a big deterrent. "I am well aware that the system sometimes makes good men bad, and bad men worse," but the worst must have been "thoroughly vicious by nature, and beyond redemption before they came to prison."⁴¹ He knew of many suicides, by hanging, cutting throat, starvation, and jumping off railings, and he wanted the "balmies" or weakminded to be separated from the rest.

Many offences formerly punished by long terms of penal servitude were now punished by imprisonment only, with or without hard labour, for periods not exceeding two years, which was a great reform. A second reform was the segregation of first offenders, for up to 1879 there was no classification between first offenders and habitual criminals. As a result the Commission could report in 1901 that

since the formation of a star class in convict prisons, (that is, first offenders who were segregated from the others), from 1879 up to March 1902 only 1.2 percent of those discharged from the star class had returned to penal servitude. The star class system was extended to local prisons in 1897-98. A third reform was the special treatment of young offenders from the age of 16 to 21 who were to be sent to Borstal - a penal reformatory, and in the words of the Prison Commissioners;

"it is becoming every day more evident that it is by prevention alone, i.e. by concentrating attention and care on those who are young enough to be amenable to good influences that this great problem can be satisfactorily handled".⁴²

The Prison Report of 1902 protested against the continuing imprisonment of young children, paupers unfit for work, and the dying. Many children were imprisoned for trivial offences like playing football in the street, or throwing snowballs. Some were imprisoned for a month before trial for an offence so trivial that its maximum sentence was fourteen days.⁴³ Prison governors frequently deplored the absurdity of short sentences given by too many magistrates - two days might be given, which meant in effect: bath, prison clothes issued, medical examination, and discharge next day! As each of these short imprisonments counted as previous convictions, thousands of boys were classed as criminals who should never have been imprisoned. In addition to the indefensible practice of convicting penniless children for the non-payment of a fine, there was the cruelty of sending the dying to prison - during 1901 thirty-five prisoners died after a week there. Sick paupers

were sent to prison and sentenced to hard labour although too weak to work, the charge by the work-house authorities being "refusing their task." The Commission of 1902 ordered magistrates to give paupers medical examinations before committing them to prison.

Sievwright in Perth substantiated Neville's description of the prisoner's dreary days; the ten hours' work, the one hour's exercise in silence, the strict routine, the hours of loneliness in cells, the longing to communicate. He too stressed the paucity of letters and visits suffered by the prisoners. Ordinary prisoners (serving under two years) were not allowed to write a letter until they had served 3 months and then only if conduct and industry were satisfactory. Visits were allowed only after 3 months service and at the end of each succeeding 3 months. But a convict, that is a prisoner doing penal servitude for 3 years and over, could exchange letters and a visit within one week of conviction and thereafter at intervals to be determined by conduct and industry.⁴⁴ The desperate desire for company led many prisoners to make pets of jackdaws, starlings, pigeons, even mice.

Part Two

There are no descriptions of Scottish prison life at the turn of the century comparable to those by Wilde and Neville. Either there were no prisoners with a literary turn of mind, or they did not care to enlighten the world on such a subject, or failed to achieve publication. But as uniformity had been established in 1877 the conditions which Wilde and Neville describe may be taken as representative of Scottish prisons also.

From the Reports of the Prison Commissioners (Scotland), much information with a Scottish flavour is available and a composite picture of Scottish prison life emerges. Those consulted in detail are the Reports for 1878-84 and for 1898-1904.

The General Board of Directors of Prisons in Scotland, between its inception in 1840 and its ending by the 1860 Prisons (Scotland) Act, had closed permanently 101 prisons. The 1860 Act brought Perth General Prison under a body of Managers and closed 21 more, 7 of these being rebuilt. Thus between the 1839 and 1860 Acts, 122 County prisons were closed in Scotland, leaving in existence in 1877, 56 of the 178 prisons which had originally come under the administration of the General Board.¹ The Commissioners held their first meeting in 1878 and closed 13 out of the 56 local prisons transferred to them by the Act of 1877. The remaining prisons afforded between them cell accommodation for 1,938 males and 1,168 female criminal

prisoners, making a total of 3,104. The average daily number of such prisoners during the year ending 31st. March was 2,024 males and 1,028 females, making a total of 3,052.² The Report of the Commissioners 1898-1904 gives a list of prisons in Scotland in 1898, the number by then being reduced to 14.³

The Report of 1904 shows the average daily number of prisoners in custody since 1840. The population of Scotland in 1845 was 2,742,000 and in that year there were in custody (total of all classes) 1,392 males, 774 females, total 2,166.⁴ The population by 1880 had risen to 3,665,443 and there were in prison 2,043 males and 999 females, total 3,042.⁵ In the year 1878-79, in the 41 prisons then in Scotland, the average daily number of criminal prisoners in 20 of them was 6, and of these 20, 5 had an average of only one prisoner throughout the year.⁶

During most of 1878 all male convicts sentenced to Penal Servitude in Scotland were detained during their probationary period in the General Prison, and were subsequently removed to a public works prison in England; but in January 1879, owing to the large increase in committals and limited accommodation for them in Scotland, it was necessary to remove them immediately to convict prisons in England. Thus 143 were removed to Pentonville, leaving only 14 in confinement, all being either criminal lunatics or under observation for mental conditions.

At the end of December 1898, convicts in confinement numbered

318 males and 9 females, and of these 12 males were sentenced to life, 1 male to 20 years, 10 males to 15 years, and 90 to 3 years. One female was given 3 years. The largest numbers were in the 25-30 and 30-35 age groups with 63 men in each. The numbers drop sharply in the group between 45 and 50, but rises again in the group over 50.⁷ The chief crimes for which these convicts were convicted were theft by house-breaking (73 men and 1 woman); theft (63 men and 3 women); culpable homicide (62 men); rape (22 men); murder (7 men); incest (6 men); forgery (4 men); and horse and cattle stealing (4 men).

At the end of December 1904, 12 male convicts were serving a life sentence, 3 twenty years, 22 ten years, and 90 men and 3 women five years. Again the largest group was aged between 25 and 30 (50 men and 2 women), and between 30 and 35 (50 men and 1 woman), with the biggest number of female convicts in the over 50 group (4 women).⁸

In 1878-79 there were no children under 12 years in Perth General Prison, and only 15 male juveniles and 2 females between 12 and 16 years.⁹ The largest group was that between 21 and 30 and contained 294 males and 137 females. Next came the 16-21 group with 281 males and 53 females. The numbers dwindled to 19 males and 9 females in the over 60 group. In 1898 in all Scottish prisons there were 30 children under 12 in custody and 381 between 12 and 16. These were kept apart and received "special care" from warders.¹⁰ In 1904 the Commissioners "regret to add that" 191 boys and 15 girls under 16 were sent to prison.¹¹

The phasing out of transportation might have been expected to produce an increase in the numbers sentenced to penal servitude. However, other factors supervened. In 1851 the number of convicts sentenced to transportation was 362 men and 171 women. In 1857 the number transported had fallen to 47 men and 9 women, while 135 men and 60 women were sentenced to penal servitude. By 1867 when transportation was finally discontinued the numbers sent to penal servitude were 125 men and 51 women, dropping to 71 men and 4 women in 1904.¹² Penal servitude sentences were classified differently from transportation sentences, i.e. 4 years, 6 years and above 4, 8 years and above 6, 10 years and above 8, life.

The Commissioners in the Preface to the 1898 Report noted with satisfaction that in 1898 "criminals sentenced to penal servitude continue to be comparatively few. The average yearly numbers during the last decade were 80 men and 6 women; while the numbers for the previous decade were 141 men and 22 women. The daily number of the convicts in custody the year before averaged 322 men and only 9 women. We believe the principal cause for the reduction in these numbers will be found to be the greater leniency shown by Judges on the bench in dealing with criminals".¹³ Thus, as in England, the average yearly number sentenced to penal servitude became less in the early 1900s.

At the same time the Preface to the Annual Report of the Prison Commissioners for Scotland for the year 1898 notes with misgiving that during the year there had been a large increase in the number of committals to prison.

The average of the previous five years was exceeded by more than 5,000. The total receptions were 56,561 - "a figure which has never before been reached in Scotland."¹⁴ There was an unparalleled rise in numbers during the last half of the year 1898. The Commission found this "a very disappointing fact, having regard to the general improvement in the condition of the population the rise in the commitments to prison has been proportionately more rapid than the increase in population."¹⁵ For while in 1844 (the first year for which complete records were kept) there was one committal to prison for every 140 of the population, the 1898 numbers were one for every 75 of the population, i.e. the percentage of committals had almost doubled during the last 50 years.¹⁶ But the Commissioners were careful to point out that the high numbers did not indicate the prevalence of serious crime; rather were they indicative of the great increase in the number of new statutory offences, and the increased severity shown to drunkenness by the police during the previous 40 years. The committals of 1898 were 5,000 more than in 1897, many being assaults by husbands on wives, thefts and indecent conduct; but the main cause had been the rise of 3,800 under the head of drunkenness and breach of the peace. The increased number of committals for lesser offences rather than for serious crime is important, as it indicates a different type of criminal, the petty offender rather than the hardened criminal, making up a bigger proportion of the prison population.

The year 1898 had seen in Scotland a great demand for labour of all kinds, so the Commission concluded that more money was spent

by wage-earners on excessive drinking, and added that "the need for checking these offences, particularly in Scotland, by more effective means than those afforded by a few days' imprisonment, has at last been recognised."¹⁷ But a different picture was shown in 1904 in the Preface to the Annual Report of the Prison Commissioners. The committals of ordinary prisoners were shown to have decreased by 3,546 or 5.9% below the last year's total. Similarly the daily average number of ordinary prisoners in custody dropped from 2,604 to 2,545, or by 2.3%. The average length of time that prisoners spent in custody had risen from 5.8 days to 16.5 days.¹⁸ In contrast to the 1898 figures, the trend was for the number of minor offences resulting in imprisonment to go down, but the more serious crimes had increased. Thus breaches of the peace and drunkenness showed large reductions below the average of the last five years; the average number of committals for the five years previous to 1904, for drunkenness and breach of the peace was 38,848; for 1904 these committals were 32,959, showing a fall of 15%. The Report says that it is "very satisfactory to note a sensible decrease in the imprisonments for disorder, which have always been the controlling figures in the Scottish Prison Statistics."¹⁹ But on the other hand, cruelty to children, intent to steal, thefts, frauds, and housebreaking had increased greatly: the average number of imprisonments for housebreaking with violence for the previous five years was 563, in 1904 it rose to 869 or 54% above the previous five years' average.²⁰ The return of sentences of ordinary prisoners at 31st December, 1904, ranged from short terms of 3 days (19 males, 12 females), 15 days (19 males, 3 females), and 30 days (190 males, 117 females)

to 2 years (7 males).

The numbers daily in custody would have been higher but for the action of the Fine or Imprisonment (Scotland & Ireland) Act, 1899, which led to the liberation of 7,433 prisoners before the end of their sentence - a step in the right direction. The total number of different individuals received into prisons during 1904 was 39,880. Some 2,386 had been in prison 20 times or more and there was little hope of improvement for them.²¹

It is apparent from the reports that, as at the present day, the majority of prisoners came from the labouring class. Thus in December 1898, among the male prisoners, the trades predominating were those of labourers and outdoor workers, whose total of 944 far exceeded all others; "iron-workers, riveters, etc." accounted for 103, miners for 93, tailors for 82, pedlars and hawkers for 65.²² It is interesting to note that there were only 6 professional men, 14 vagrants, 1 newsboy, and 1 servant among the prison population.

In 1904 the agricultural and outdoor labourers were again the largest group with 988; "miscellaneous" came next with 239, while employees in smelting works and foundries had 109, miners 100, and tailors 75. Again there were only 6 professional men, 6 vagrants and 1 servant. Of the female prisoners, housewives were in the majority at 108, millworkers came next with 81, charwomen with 66, pedlars and hawkers 49 and prostitutes 40. There were 7 female vagrants and 15 domestic servants.²³

As for the personnel responsible for the custody of these prisoners, the total number of prison officers on March 31st., 1884 comprised: first class prisons like Perth General and Glasgow had 100 male and female and 81 male and female respectively, while second class prisons such as Barlinnie and Edinburgh had 46 males and 42 males and females. Sixth class prisons like Dingwall, Selkirk, Kirkwall or Stornoway had only 5 males and females.²⁴ The total number of prison officers for Scotland was 429 including governors, chaplains, doctors, teachers and warders. In the smaller prisons the chaplain, the governor, or even the matron would double as teacher. At the end of 1898 the total number of prison officers was 434 (342 males and 92 females). The largest numbers were 65 males at Barlinnie, 54 males at Peterhead, 23 males and 10 females at Edinburgh, and 22 males and 11 females at Perth.²⁵ In 1904 the total number of prison officers was 454.²⁶

The wide divergence of staff pay in the different prisons was a cause of disquiet and the Commissioners in 1878 advised a uniform scale. They also opposed many warders having a salary and free house plus coal and gas, and wanted all such allowances (save quarters) to be commuted into money payments and added to salaries. They advised the raising of the minimum age to 24 for males and 22 for females.²⁷ The Preface to the 1898 Report pays a mild tribute to the warders who "have performed their duties with discretion and to our satisfaction."²⁸

The salaries and wages for a first class prison like Perth in 1884 came to £9,201:15:9, while the gross expenditure (including

uniforms, food, clothing, bedding, fuel, light, medical supplies, furniture, and gratuities to prisoners - not labouring materials or escorts of prisoners) amounted to £17,751:17:5. A sixth class prison like Stornoway spent £146:3:8 on salaries and wages and £195:4:9 in gross expenditure.²⁹ The average annual cost per prisoner in prisons where annual daily number of prisoners in custody was 5 or more, came to £28:6:3 in Perth General for an average daily number of 627, and to £38:0:1 in Selkirk for an average daily number of 8.³⁰ The average cost per annum of different classes in custody was £21:13:7 for each ordinary prisoner, £43:12:8 for each convict, and £49:17:11 for criminal lunatics and inebriates.

The subject which next engages us is that of board, bed and clothing for the prisoners. Since the institution of the late General Board of Prisons in 1839, local prisons in Scotland had been given uniform scales of dietary. These were subject to revision from time to time, the latest being in 1874. The new rules of Feb., 1878 were based on these - no alteration was considered necessary for rules on dietary. The Report of 1899 on Prison Diet advocated a liberal one, and in 1901 a new and improved dietary was given to prisons.³¹

The clothing issued to both men and women prisoners sounds adequate and was probably much more so than they were accustomed to outside. Male convicted prisoners were issued with cap, jacket, vest, braces, trousers, and a stock of moleskin; drawers of cotton in summer, serge in winter; shirt of unbleached cotton, pocket handkerchief, shoes - one pair leather, one pair canvas - stockings, grey with red rings, apron of plain sheeting. The male untried

prisoners were supplied with the same as above, save that cap, jacket, vest, trousers and stock were to be made of corduroy and stockings to be dark grey with yellow rings.³² The dress of their female counterparts was less drab in colour. Each was allowed a short gown with green stripe, upper petticoat of red and black drugget, under petticoat of blue plaiding (two in winter), boddice (sic) of stout twilled cotton, shift of unbleached cotton, pocket handkerchief, neckerchief (in summer), shawl (in winter), shoes - one pair leather, one pair canvas - stockings, grey with red rings, cap, of unbleached cotton, apron of bleached cotton. Female untried prisoners wore the same, save that their short gowns were of scarlet stripe, their upper petticoat green and black drugget, and their stockings dark grey with yellow rings. Flannels were only to be supplied on the recommendation and authority of the medical officer. Prison dress was supplied to male and female untried prisoners only when their own clothes were not sufficiently clean and comfortable.³³

With dress so with bedding, for at night the average prisoner would find himself sleeping in greater comfort than in the teeming hovel from which he came. For every prisoner except those required to sleep on a guard bed had to be supplied with a bedstead or hammock, a mattress and a pillow, two single blankets in summer (three in winter), a bed rug, two sheets and a pillow-case. When the bedstead was of iron, a strip of coir-matting was to be placed under the mattress. Those on guard beds got wooden pillows and everything on the list save mattress and pillow-case.³⁴

No doubt the generally adequate standard of bed, board and

clothing was a factor in equipping the prisoner to withstand ill-health. Despite this, numerous diseases were treated in Perth General Prison during 1869-78, the chief of these being phthisis (50 sufferers), abscess (36), scabies (32), ulcer (27).³⁵ The medical report on all prisoners in Scotland for the year ending 1898 states that of the 58,981 prisoners in custody during the year, only 1865 or 3% suffered illness serious enough to warrant being on the sick register. There were 19 deaths in prison, excluding one by suicide and one by execution, which was equivalent to a mortality of 7.2 per thousand per annum (of the average daily prison population). Twelve out of the 19 deaths resulted from disease contracted before admission. (Of the 1,865 sick, 79 were due to zymotic diseases - including influenza - 156 were from "constitutional diseases", 205 from respiratory diseases, and 43 from heart disease). There were no cases of typhus, enteric, diphtheria or dysentery, and the phthisis cases also showed improvement over those of 1897. There were very few diseases such as anaemia, diarrhoea, and dyspepsia, which could be due to a faulty diet. Bronchial disease was the only one which showed a material increase. It was "satisfactory to observe that although admissions had increased by 9% and the average prison population by 7%, the total number of sicknesses acquired during imprisonment had decreased by 14%."³⁶

There were no serious epidemics in 1904, says the report on the health of the prison population in December of that year. There were only 10 deaths in prison including one suicide and one execution.³⁷ The chief diseases for which prisoners were treated in 1904 were abscess (60 males, 35 females), influenza (54 males, 68 females),

Heart disease (45 males, 25 females), D.T.s (41 males, 25 females), insanity (34 males, 17 females), ulcer (33 males, 114 females), and wounds (50 males, 77 females).³⁸

A table shows the daily average population at Perth General Prison during the 37 years from 1842, when the prison was opened, to 1878 inclusive. On adding the daily averages up, the sum total of 21,163 is reached, while the sum total of deaths equals 322, showing the average rate of deaths per annum to be about 1.5% or 15.06 per 1,000. The chief diseases which proved fatal during those 37 years at Perth and the number of deaths from each were: phthisis (90), brain disease (18), 'worn out' (18), heart disease (14), pneumonia (13), decay from insanity (10).³⁹

As regards sickness in Glasgow Prison in 1882-83, the surgeon noted that there were fewer sick than in previous years and says a great proportion of complaints "are closely connected with dissipation" in its various forms. "Diseases which are the direct sequelae of intemperance and vice continue to bulk largely in the statistics of this prison and they are equally common among both sexes."⁴⁰ The average death rate in the prison for the previous ten years was 9.52 per 1,000, but for the last year it was 5.71 per 1,000. The surgeon attributed this improvement to better nursing and more attention to cleanliness.⁴¹ The number of serious illnesses during 1882-83 were 75, the chief ones being: D.T.s (10), heart disease (8), bronchitis (5), and 4 each for phthisis, pneumonia, and congestion of the lungs. It would seem that the prisoner had a better chance of resisting

disease inside the prison than outside.

So the prisoner is revealed at least as adequately fed, better clad and housed and receiving more medical care than his free brother. How were his days occupied? The common prison employments were carpentry; book-binding; teasing of hair, hemp, flax, rope, and oakum; making of mats, nets, mattresses and baskets; sock sewing; stone breaking; tinsmith work; weaving; winding; sewing; shirt and shoe making; tailoring; labouring.

The 2nd Annual Report 1879-80 pointed out that in small prisons away from trade centres, it was necessary to employ prisoners in cleaning the prison and in work like teasing oakum, wool or hair and in local work. The great difficulty was the rule that prisoners sent to hard labour could "only be employed at picking oakum dry, or the crank machine. The latter is wholly unproductive, whilst the former, owing to the difficulty of disposing of oakum, barely covered the cost of material when sold."⁴²

The Preface of the Report of 1898 states that prisoners have been actively employed all year though it was often difficult to get suitable work as "there is always in prison a residuum of so low a type - so deficient in intelligence and in physical strength - that it is well nigh impossible to provide any satisfactory occupation for such prisoners."⁴³ The kind of work varies according to the general labour of the district and surroundings of the prison. Where land was available, prisoners were engaged in outdoor labour as far as possible and on building repairs too. The Annual Report of 1904 pointed out that "the restrictions on prison industries prevent

the introduction of many of the forms of labour which would be best suited for obtaining willingly from the prisoner his best endeavours. We are, however, developing, where it can be done, associated work in preference to work done in separate cells."⁴⁴

In addition to work, the monotony of the prisoner's day was broken up by attempts to educate him. The most important alteration in the treatment of prisoners throughout 1883-84 was in respect of education in prison.⁴⁵ Soon after the passing of the Prison Acts, 1877, a committee was appointed in England on this subject and a report made in 1883. Scotland was to be brought into "harmony" with steps taken in England. Scotland made certain modifications which were agreed on. Education was to be given to all female convicts doing penal servitude, no matter what their age, and to prisoners serving over sixty days. Thus education was to be for all female convicts doing penal servitude, juveniles under 16, imprisoned prisoners with sentences over 60 days who were not over 40 years.⁴⁶

The Preface to the 1898-1904 report states that those under 35, being illiterate and sentenced to over 2 months, are taught, and states that the chief causes of illiteracy are children sent too early to work, truancy, and careless parents.⁴⁷ In 1904 illiterates were to be taught in class rather than separately in cells. Weekly Sunday Schools were held for men and

women and staffed by voluntary helpers and there were lectures on "interesting subjects".

In addition to the discipline of order and regular work and in some cases of education, "various moral forces are utilized with a view to the reform of prisoners, these being the influence of a minister of religion, visits by ladies, Sunday bible classes, Discharged Prisoners' Aid Societies, Salvation Army Officers who help with after care."⁴⁸

Notwithstanding the more progressive attitudes in the realms of work and education, punishments or the threat of them continued to figure largely in the prisoner's life. For the year ending 1880 the most commonly awarded punishments were: (a) reduction of diet, when a total of 2,103 men and 575 females, in all the prisons, suffered. 685 men and 315 females were punished in Edinburgh alone, while Glasgow "corrected" 297 men and 50 females; (b) sleeping on a wooden guard bed - 71 males, 24 females; (c) imprisonment in dark cells was inflicted on 145 males and 67 females; (d) isolation at exercise - 105 males, 21 females; (e) restraint of limbs, 140 males, 66 females. No separate confinement or wearing of particoloured dress was given. The least awarded punishments were picking oakum (4 males, no females), and forfeiture of gratuity (4 males, 13 females).⁴⁹

The most common offences for which these punishments were awarded were attempted communication (459 males, 43 females), deficiency in work (430 males, 158 females), damaging prison property (448 males, 65 females).

In 1898, still the most frequently awarded punishments were reduction of diet (3,895 men, 388 females), and sleeping on a wooden guard bed (1,339 men, no females).⁵⁰ The least awarded were corporal punishment (only 1 male, at Peterhead), parti-coloured dress (2 males at Peterhead), separate confinement (22 males at Peterhead), and setting to hard labour (9). The most common offences for which these punishments were given were similar to the 1880 list with again attempts to communicate heading the list (1,234 at Barlinnie, 131 at Edinburgh, 112 at Peterhead, and 19 at Perth.)⁵¹

In 1904, the total punished in all the prisons were 3,257 males and 450 females. Again the chief punishments were the favourite reduction of diet (3,905 males, 346 females), sleeping on wooden bed (755 males), and this time forfeiture of marks moves into second place with 859 males and 149 females. The least awarded punishments were similar to those of previous years, as were the offences punished.⁵²

The attitude of the prisoners and their reaction to the treatment meted out to them are important because of the conclusions that may be drawn about the changing attitudes to penology. From scanty quotations from chaplains, at times sanctimonious, a little can be gleaned. Thus a Roman Catholic visiting priest at Perth General Prison: "I have found them as a rule quite happy and content and frequently, and unasked, speaking with pleasure of the kindness shown to them." He adds, "of course, exceptions are always to be found in every possible condition of life, and it is therefore not to be wondered at if a few professional and chronic grumblers turn up, now and again, in the General Prison", and he states that almost always when he was complained to, "the cause of the complaint was either unjust or trifling but most frequently the pure or impure outcome of loose passions."⁵³ The chaplain at Barlinnie, in March 1883, says that library books are much appreciated by prisoners and goes on to pontificate: "But some of them, I am sorry to say, prefer books that treat on secular subjects, rather than those works which discuss religious topics."⁵⁴ The chaplain of Edinburgh Prison in 1883 shows resignation: "It is no easy matter to raise the fallen. Where intemperance has a strong hold, where the character is much blemished, where the clothing is bad, where imprisonments have been frequent, whatever advice you may give you often cannot do

much."⁵⁵ In Extracts from the Report by the Inspector of Prisons for the year ending December 1898 there is an interesting quote from Peterhead General Convict Prison. The resident chaplain, answering a question as to whether penal servitude did any good to prisoners, stated: "I think the reply on the whole must be in the affirmative", and went on to say that quite often the first term penal servitude men admitted that if they had got their sentence years ago it would have made them different men. On the other hand men were often confirmed in crime before being sent to penal servitude and so lapsed again when freed.⁵⁶

We have seen during this period that the 1877 Acts resulted in a common policy for all prisons and a strong centralised authority. This centralisation was manifested by Du Cane's harsh, repressive policy which in turn led to the Gladstone Report in 1895, and the Prison Act of 1898 embodying many of that Report's progressive recommendations. The Probation of Offenders Act, 1907, and the Children's Act, 1908 were great steps on the road to reformation.

The ending of transportation continued to have a profound impact. Before 1867, the whole aim of authority was to get

rid of the wrong-doer. After that date, and throughout this period, a change in attitude is apparent. This does not mean that the public had become more enlightened in their ideas: simply that since transportation was no longer practicable the public conscience was forced to take stock. But this does not necessarily imply that that conscience had become more scrupulous: only that prisoners now forced themselves on the attention of the public by being kept in the country. For imprisonment was now established, along with capital and corporal punishment, as a major sanction of criminal law.

During the period there were serious attempts to improve the prison conditions, attempts influenced by the Gladstone Report and the 1898 (England) Act. Some concern for the sick was shown and the numbers suffering from various diseases were carefully tabulated and comparisons made between different years in an effort to discover why certain illnesses were on the increase or otherwise. Also endeavours were made to improve prison diet, which until 1899, had been regarded as an instrument of punishment. After the 1899 Report pressed for a more liberal diet, and the new dietary was introduced in 1901, a definite improvement was apparent.

There were sustained efforts to make work productive and regular, in order to give the prisoners a disciplined aim in life. This was a constructive attitude, reflecting the gradually accepted recognition that work was good for morale, part of the process of reform. Similarly some consideration was shown for the morale of the prisoners by promoting education instead of leaving them in a vacuum; by encouraging the use of library books (albeit chiefly with a strong religious flavour); and by lectures on "interesting subjects". In addition various moral forces were marshalled with a view to the reform of prisoners.

Thus a slow and painful trend can be traced towards the chief aim of twentieth century penology - to rehabilitate the prisoner. It was now recognised that prisoners should be reformed, not just shut away and forgotten. Thus the Edinburgh Prison chaplain: "It is no easy matter to raise the fallen ... you often cannot do much." But it was now accepted that the attempt should, at least, be made.

But despite the improvements, much hardship continued in prison conditions. The prisoner, with shaven head, wearing his "dress of shame" decorated with broad arrows, spent many hours locked up alone in his cell. Sanitary conditions were disgusting; little recreation was allowed in association; the rule of silence

was all too often stringently observed; letters and visits were few; punishments pressed hard on the weak, the chief one being the reduction of the still meagre diet.

Part Three

Prison Buildings

The Prison Act of 1877 and the nationalisation that followed had a profound effect on the actual prison buildings in Scotland. By the Act, fifty-six prisons under local management were transferred to the Prison Commissioners for Scotland. The closure under the Act of many small prisons, leading to increasing centralisation, meant pressure on accommodation in the larger prisons. This in its turn led to the need to build extensions or new buildings at the sites of the bigger prisons.

At Inverness, the original prison in the Castle was one of the fifty-six transferred. The closure under the Act of the small prisons at Nairn, Portree, Fort William, Tain, Wick, and Dornoch, in the Inverness district, increased the prison population at the Castle beyond its capacity, but, owing to the difficulty of enlarging or disposing of the building, nothing was done until 1886. At this date twelve cells were added, separating men and women, and providing bathroom and laundry facilities. This enabled the prisons at Elgin and Dingwall to be closed, and the concentration of the prison system in the North of Scotland to be effected. However, increased prosperity in trade and the number of works in the district such as aluminium and railways, led to a steep rise in the number of prisoners received, and necessitated frequent syphoning off of inmates to Perth Prison. The increase of the prison population at Inverness may be explained by the fact that before the influx of industry and factories this was a

rural district with a close knit community. Fathers and sons worked on the family crofts and parental authority was strong. But when the young people began to leave home to work in the new factories, parental ties loosened and authority lessened. Living in lodgings among strangers, frequently exploited by their employers who were too often interested only in getting a hard day's work out of their employees, the new labour force experienced no sense of mutual trust or responsibility, and had no community of interest.

The opportunity to sell the Castle to the local authority for police use led to the erection of a new prison on ground off the old Edinburgh Road near the Courts and extending to over two acres. Prison labour was used and the new building was partly occupied in 1902, fully so by 1903. It was intended as a place of detention for all descriptions of criminal and civil prisoners received from the northern counties of Scotland, exclusive of Orkney and Lewis. It had 49 cells for males and 10 for females, and 4 association rooms.¹

At Aberdeen, an Inspector of Prisons reporting in 1878 found the buildings of the "East Prison" at Lodge Walk, erected in 1819 and enlarged in 1868, badly situated and constructed, the cells being small, dark and ill-ventilated, and the cooking, washhouse and bathroom accommodation insufficient. The prison was accordingly declared unsuitable for modern discipline and a payment made by the local authorities towards provision of a new prison. But because of heavy annual expenditure at Edinburgh and Glasgow, work was delayed until

1877, when the site was purchased for new buildings. These were started in 1889 and finished in 1891 at a cost of £19,000. The old prison was discontinued in the same year by order of the Secretary of State.

The original purpose of the new prison was to accommodate all descriptions of criminal and civil prisoners received locally - that is, to be a general prison for the North and North-east. The original site, extending to four acres, was on the south bank of the Dee at Torry, a mile from the city centre. The buildings of Aberdeen granite had, on three stories, 61 cells for males, a hospital, a padded cell, and an associating cell; the female side had 21 cells, hospital, padded cell and associating cell. The offices of the Governor, Medical Officer, and Chaplain, were within the Gate House. There were also male and female reception rooms, stores, chapel, baths, kitchen, laundry, and quarters for the female officers. In 1902 there was an extension of the male prison by 24 cells, built by prison labour. A further extension of 21 cells, and a hospital and bathrooms, was begun in 1902 and completed in 1904, again built mostly by prison labour.²

The General Prison at Perth, started in 1840 and completed in 1859, is now the oldest prison in Scotland. Its first two wings were opened in 1842; originally, in addition to longterm prisoners, it was used to house in a separate building a few insane and some juvenile prisoners. Later male convicts were received for probationary

periods in solitary confinement, prior to transfer to public works prisons in England.³ In 1888, when Peterhead Prison became available, their removal to Perth was discontinued and female convicts were received instead.

The original site at Perth comprised 25 acres. This included the prison of four halls, A, B, C, and D, constructed on the radiating plan of prison architecture, similar to that adopted in prisons based on the separate system of prison discipline. The accommodation provided in the original buildings was as follows: Three of the four halls had cells used for solitary confinement, while the fourth was partitioned into smaller cells used as dormitories for convicts kept in association for much of the day. There were 580 ordinary cells, 16 punishment cells, and 108 cells for females. The Lunatic Department provided accommodation for 87 in rooms. In 1878-9 the Prison Commissioners acquired three and a half more acres for a new building to house all the female lunatics, leaving the existing building to the male lunatics.

The acquisition and date of opening at Peterhead was much later than with the other prisons. The first report of a Committee on Employment of Convicts reported in 1882 that "the most likely prospect for benefiting the shipping and fishery interest of the country at large and at the same time profitably employing convicts, is the construction of a harbour of refuge at Peterhead in Aberdeenshire". Thus in 1886 the Peterhead Harbour of Refuge Act, by S.23 of which

the Prison Commissioners for Scotland were authorised to build a prison. This power enabled them legally to detain in Scotland on conviction all male prisoners sentenced by the Scottish Courts to penal servitude. Previously these convicts had to be transferred to an English prison after they had completed their probationary period of nine months' solitary confinement in Perth General Prison. The Peterhead Sentinel and Buchan Journal of 10th August 1888 described this result as "part and parcel of a just and unanswerable claim on behalf of Scotland to the services of their own criminals".

The land was bought for £5,000 in 1885, the prison opened in 1888, and by 1891 all the cells were nearly completed. The first intake of prisoners was twenty. Their arrival caused great excitement in the town, and for days crowds occupied the railway station, avid for the first sight of the convicts. They travelled in a prison van - the only one in use in Scotland for railway purposes - the warders sitting in the middle of the van with ten convicts on each side. They were dressed in rough white sacking stamped with broad arrows, and wore smart caps and shoes.⁴ The arrow-head placed on Government stores and also on convict clothes originated with Henry, Earl of Romney, who was Master General of the Ordnance 1693-1702, and employed his own cognisance of a pheon or broad arrow.

The original purpose of the prison, stated in the 1886 Act, was for the whole building and grounds to be a General Prison for the confinement of male prisoners sentenced to penal servitude, i.e. persons convicted of aggravated crimes for which, prior to 1891, the minimum period of detention was five years, thereafter reduced to three years. The original accommodation was for 208, but during the first years of this century the population fluctuated round an annual average of 350, reaching a peak figure of 455 in 1911. In 1909 fifty four cells were added to 'B' block.⁵

The prison at Dumfries, built in 1851-2, was one of the 56 prisons transferred to the Prison Commission in 1877. By S.12 of the Act it was provided that the obligation of any prison authority or any county or burgh to maintain a prison or provide accommodation for its prisoners should cease as from 1st April 1878. Dumfries prison, as transferred, was badly planned, cracked from defective foundations, in a filthy and dilapidated condition, and had not been heated for two or three years. In 1881 a new site, on the outskirts of Maxwelltown, was found for the new prison, to accommodate eighty prisoners and provide for officers' residences, to replace the unsatisfactory prison, and also to replace the small ones at Kirkcudbright and Stranraer. It was finished in 1883.

The initial purpose in 1883 was to provide a place of detention for all descriptions of criminal and civil, male

and female, prisoners from the South-west district of Scotland. The extent of the site and the buildings was over two acres. The building had two wings with a central wall between; each wing had three flats of cells and the details of construction, heating, and ventilation, were based on a plan for the new building at Barlinnie, Glasgow. There was a large cell on each floor for officers and for hospital purposes. The female portion was screened from the male side by a corrugated iron partition to allow extension of either department easily, according to the varying numbers of male and female prisoners. On the ground floor were offices for the governor and medical officer and apartments for the matron, and the chapel was on the upper floor. The kitchen, laundry, bathrooms and stores were in the basement. The governor and officers lived just outside the prison gate. A new laundry and kitchen were added in 1895, and then nothing more until 1935.⁶

When the Prison Act, 1839, was passed, there were eight prisons in the City and suburbs of Glasgow. All were discontinued before the end of 1840, except the Bridewell in Duke Street, called the North Prison, and the Burgh Prison near Glasgow Green, called the South Prison. The latter was discontinued as a prison in 1862. Increased pressure on accommodation at Duke Street, and at Hamilton, Lanark, and other local prisons in the Western District, led the County Prisons Board to recommend the erection of a new prison outside the city with cell accommodation for 1,000

prisoners and facilities for further extension. The erection of the new prison at Barlinnie lasted from 1880 to 1886, each block being brought into use on its completion. The purposes of the new prison were : 1) to relieve pressure elsewhere and to enable the discontinuing of inadequate local prisons at Campbelltown, Rothesay, Airdrie, Forfar, Hamilton and Lanark; 2) to provide for sudden rises in the number of short sentence prisoners which occurred at certain times of the year^{such as festive seasons}. An order by the Secretary of State in 1882, made under the Prisons (Scotland) Act, 1877, appointed that buildings erected and to be erected at Barlinnie should be a legal place of detention for all descriptions of criminal prisoners, and an Order in Council of July 1882 declared the prison to be a General Prison for Scotland.

In 1879 some $32\frac{1}{2}$ acres were bought at a cost of £300 an acre, forming part of the farm at Barlinnie to the east of the city on the Cumbernauld road. Four more acres were added to make a road to the prison. The buildings consisted of four storey cell blocks with accommodation for 200 prisoners in each block, measuring 230' long, 50' broad, and 160' in height. A report of March 1888, referring to the peak daily reception of 120, forecast that the prison population was not likely to rise above 830. In that year, houses for the chaplain and the medical officer were built outside the main gate, and the upper floor of the prison offices were converted into a hospital. In 1890,

corridors between cell blocks were opened up; in 1893 a new chapel was finished; and in 1894 a new cell block was built to meet the sudden rises in the number of short term prisoners at certain times of the year. In 1908 part of 'E' block was partitioned off to accommodate persons sentenced to detention under Part 1 of the Prevention of Crimes Act, 1908.⁷

At Greenock the old prison was not demolished until 1887, and meanwhile a new building at Nelson Street had gone up in 1869-70 which was to continue in use until 1910. The visiting committee of May 1886 recommended various improvements, among them that the iron cage should be done away with, "providing that this could be done with safety".⁸

CHAPTER VII

LUNATICS IN PRISON

The connection between lunatics and the development of prison theory and prison conditions may not be apparent at first sight, but in fact the earlier practice of confining lunatics in prison created problems which inevitably had a far-reaching effect on the development of prison reform.

The plight of lunatics in Scotland, as in European countries generally, had always been an unenviable one. "In the criminal law of the Middle Ages very little notice was taken of the insane. Even raving lunatics were sometimes hanged and were, in any case, often treated as criminals whether they had committed an offence or not. They were frequently flogged, as criminals were, to drive the devils out of them".¹

Until the late 18th and early 19th centuries lunatics continued to be the responsibility of relatives or friends who looked after them - if they were so inclined - until the burden became too great, when the unfortunates were often unloaded on the town jails, although innocent of any crime. Those with no kith or kin drifted to the same place.

Howard deplored the pitiable state of lunatics in English and Irish prisons: "in some few gaols are confined idiots and lunatics. These serve for sport to idle visitants at assizes, and other times of general resort. Many of the bridewells are crowded and offensive, because the rooms which were designed for prisoners are occupied by the insane. Where these are not kept separate, they disturb and terrify other prisoners. No care is taken of them, although it is probable that by medicines, and proper regimen, some of them might be restored to their senses, and to usefulness in life".² In Ireland similar conditions prevailed, despite an Act of George III, "that persons of insane mind and outrageous behaviour"³ are required to be kept separate. But the magistrates appeared to have overlooked this laudable direction, for in 1779 Howard found in "a sort of bridewell adjoining to the work-

house in Dublin ... eleven young creatures; some of these for small offences were confined with outrageous lunatics;"⁴ and at Limerick in 1787 he found in the very dirty House of Industry "several cells, where lunatics of both sexes were left to the care of one old man".⁵

We have seen in Chapter III how Neild and Gurney were shocked at the pitiable state of lunatics in Scottish prisons. The insane roused even less public concern than did the ordinary prisoners.⁶ The general wish was for them to be kept out of the public eye. "Until within these few years, this class of sufferers has met with little sympathy or compassion. It was very absurdly and unjustly supposed, that these unfortunate persons laboured under a disease that deprived them of feeling as well as of reason, and rendered them equally insensible to cold and heat, to foulness and want. The unhappy consequence of this fundamental error was not neglect only, but much actual ill-treatment ... One of the first steps towards the successful treatment of the insane was the establishment of Lunatic Asylums".⁷

Towards the end of the 18th century new attitudes started slowly to take shape, products of the Age of Enlightenment. Gradually men became aware of the paradox that as civilisation spread so did disease and mental illness. The Royal Edinburgh Hospital came into being in order to supply a great medical and social need which had become a matter of concern to such humanitarians. Its foundation in 1813 stemmed from two immediate unrelated incidents.

First, Robert Ferguson, the poet, died in Bedlam. He had become mentally sick, and Dr. Andrew Duncan (famous as the founder of the Edinburgh Public Dispensary) was called in to attend him. "I found him in a very deplorable condition, subjected to furious insanity. He lived in the house of his Mother, an old Widow, in very narrow circumstances - After several fruitless attempts to have him placed in a more desirable situation, he was at last removed to the Bedlam of the City of Edinburgh".⁸ A letter in the possession of the Royal Edinburgh Hospital describes the unfortunate Ferguson's state. He had religious melancholia and suffered from profound depression. He "became so atrocious that he required several men to keep him in bed".⁹ He was removed to Bedlam in a sedan chair on the pretence of visiting a friend, but when he realised his position he "set up the haloo of helpless misery and shouted hideously".¹⁰ He was put in the usual stone cell with a bed of loose straw, and next morning the keeper found him pacing the floor with arms folded and in sullen sadness, uttering not a word. Later, on being visited by his mother and sister, he complained of the extreme cold.

Even in 1817, for pauper patients, Bedlam was appalling: "Twenty cells, on the ground floor, are damp, and where the Patients in winter must suffer severely from cold. Part of these, attached to the old City Wall, have no fire-places or means of heating them ... They are lighted and aired solely by openings in the doors by which they are entered, and which doors open into the courtyard in which the patients Walk".¹¹ Stone floors, dirty straw, darkness, often chains, were everywhere the unhappy lot of the mentally afflicted.

The compassionate Dr. Duncan continued to visit Ferguson along with the doctor in charge of the Medical Department of the Edinburgh Poorhouse and of the Bedlam attached to it -- that is, the lunatic ward of the Edinburgh Charity Workhouse. But Ferguson's condition worsened, and after only two months in his gloomy prison he died, in October 1774, aged 24.

The Edinburgh Bedlam was known as the Cells or Schelles, and was situated inside the old city wall which ran opposite the site of the present University Medical School. It was in Teviot Place, almost opposite the new University buildings. The City Charity Workhouse was opened in June 1743. The cost of erection was met by voluntary contributions, and by agreements of 1739 and 1740 the workhouse was maintained by the Kirk Sessions from their collections and by the Town Council by their power of assessment under the Poor Law Act, 1579.¹²

Ferguson's tragic death in such wretched circumstances made such a strong impression on Dr. Duncan that eighteen years later, when President of the Royal College of Physicians in Edinburgh, he succeeded in persuading a number of influential citizens to find ways and means of establishing a "Lunatic Asylum" in the neighbourhood of Edinburgh, where the mentally ill could be assured of enlightened and humanitarian treatment. Ferguson's case had afforded

Duncan "an opportunity of witnessing the deplorable situation of Pauper Lunatics even in the opulent, flourishing and charitable Metropolis of Scotland. The loss of Reason is perhaps the most deplorable disease to which a rational being can be subjected; and in my opinion, it is impossible to conceive a more interesting object of charity than the Man of Genius when a Pauper Lunatic.

"Since that period I have mentioned, my feeble endeavours have been steadily directed to the erection of a well-constructed Lunatic Asylum at Edinburgh; and it is with some satisfaction I can say that these endeavours have been attended with at least some benefit to unfortunate Manics in Edinburgh".¹³

But although Duncan's appeal was so sponsored, funds were slow in coming in. There was a general dislike of the subject, even among the most benevolent and humane. So the second incident which led to the founding of the Asylum occurred. For in 1806 Henry Erskine, Lord Advocate, and Archibald Sinclair, managed to prevail on the Government to give a grant from Scottish estates forfeited after the '45.¹⁴ Ground at Morningside was bought, a Royal Charter was granted, and the Asylum was controlled by a body of trustees. It was opened in 1813, a grim grey building in four acres surrounded by high walls.

Everywhere the dawn of a new epoch was signalled. Asylums had been opened in Montrose in 1782 and Aberdeen in 1800, while in Paris in 1792 Philippe Pinel inaugurated the humane era in the treatment of the insane when he abolished the chains of the inmates of the Bicetre Hospital; and in 1796 Tuke, the Yorkshire Quaker, founded the Retreat at York. Duncan was influenced by these experiences and when the Asylum opened, ordered Tuke's book to be read there so that all in charge "should understand the need and the purpose of kindness in their treatment of the patients".¹⁵ At the time this was a revolutionary approach, aiming as it did at a complete reversal of the former policy of custody and restraint.

In its first days the Edinburgh Asylum took no pauper patients and the managers were severely criticised as the lack of accommodation prevented them from taking in patients whose relatives could not afford to pay for their maintenance. By 1840, however, there was a large increase in the number of patients as a result of many parochial authorities negotiating with the hospital to admit paupers. In 1840 the Queen became patron of the hospital, which became known as the Royal Edinburgh Lunatic Asylum. (To cope with increased numbers a new building went up in 1842 called Western Department or West House, while the original building thereafter was called the Eastern Department or East House and was reserved for paying patients). In 1873, Dr. Clouston persuaded the Board of Managers to buy the estate of Craig House which was opened in 1894 as Craig House Hospital. His aim, a very modern one, was to provide every possible amenity to help recovery, saying: "Nothing we can do for the comfort of our patients is too much to atone for the cruelty of past ages".¹⁶

Other Scottish towns followed the example of Aberdeen, Montrose and Edinburgh. They founded asylums which at first were chiefly private madhouses, and gradually extended their scope to cater for "pauper lunatics" and to remove these from jails, Bedlams, and the care (often unloving) of relations. Aberdeen had been opened in 1800, instituted by the managers of Aberdeen Infirmary for the accommodation of lunatics of Aberdeen and neighbouring counties, the cost defrayed by voluntary contribution. At Glasgow, Robert McNaire, a merchant, saw the neglected state of the insane of all ranks, who for want of proper accommodation were placed in damp and dismal cells, and by industrious collecting of subscriptions succeeded in founding an asylum which opened in 1814.¹⁷ In 1824, chiefly with the view of placing the title to the property of the Institution on a better footing a royal charter was applied for and obtained. At Dundee, an asylum had been established by public contributions and opened in 1820 through the efforts, started as early as 1798, of Dundee Royal Infirmary. "Patients shall, on all occasions, be treated with as much gentleness and indulgence as the state of their minds will admit".¹⁸

A new sensitivity is everywhere shown towards lunatics. "Their own good sense will prevent the visitors from teasing the patients by idleness or improper questions, or by any expression of ridicule and contempt".¹⁹ "Every asylum ought

especially to keep in view great gentleness and considerable liberty and comfort combined with the fullest security".²⁰

"The Keepers shall use the Patients with the greatest mildness and gentleness ... No Keeper shall at any time attempt to deceive or to terrify a Patient, nor to irritate the Patient by mockery, or mimicry".²¹ "Severity and corporal punishment are here unknown ... Several who had known only chains and solitary confinement for many years, have experienced in this house immunity from all restraints" and had greatly improved. One elderly man, confined for 15 years in a prison in the north of Scotland (being a criminal maniac), and "whom continued violence and furious outrage had condemned to perpetual chains", improved greatly in a very short time.^{21a}

At Perth, Murray's Royal Asylum for Lunatics had been established by the will of James Murray in 1822. "While all is sufficiently secure to prevent injury or escape, all is free from the gloomy aspect of confinement, and there is an air of quiet and comfort".²²

At Inverness, however, in 1855 the insane were still housed in the lunatic wards of the Infirmary. These were "stone vaults, which have no means of being warmed", with little air or light. Bedsteads "are fixed wooden troughs, with a bottom sloping towards the foot where a tray is introduced. At the head and foot, are chains for the purpose of fastening the arms and legs of the patient

This precaution is said to be specially necessary in winter, to keep the patients in bed, and to guard against their throwing off their coverlets and being killed by the cold".²³ No means of washing was provided. The unfortunate lunatics were supposed to be there until "they can be sent to the chartered asylums in the south", that is only for three weeks or so, but sometimes they were thus immured for six months, all the time in a cell, with no exercise as there were no enclosed airing-grounds and no attendants. For though one man "is styled keeper of the lunatics; but he is at the same time gardener, barber, and porter, and has neither the means nor the time to attend to the patients".²⁴ When lunatics were sent south to the chartered asylums they went by "steamboat, or outside the coach",²⁴ with a policeman and no female attendants.

Scotland was ahead of some countries in the treatment of paupers in hospital, for example the Massachusetts General Hospital, which was in two departments, one being a hospital for the sick in Boston, and one an asylum for the insane in Charlestown; the hospital took paying and free patients, but the asylum took no free because the "protracted nature of mental disease renders it impracticable", and further the Report of the Massachusetts General Hospital, 1836, states, "the painful necessity of rejecting applications of persons of color has sometimes arisen from the unwillingness of the ward patients to admit among them individuals of that description".²⁵

In addition, there appears to be no record of Scots visiting the lunatic wards or the prisons for the purpose of

tormenting the insane as the English were wont to do. To the London Bedlam in the 18th century men took their families, encouraging their children to join in the sport of poking the lunatics with long poles to stir them to rage or feeble antics.²⁶ Twopence was paid for this privilege. In Switzerland, Germany and France, jeering at lunatics seems also to have been customary, while "In America they were, apparently, treated with less inhumanity; but in the first hospital opened for the insane in Virginia in 1773 the emphasis was upon physical subjugation rather than treatment".²⁷

The Criminal Lunatics Act, 1800, being "an Act for the safe custody of Insane Persons charged with Offences", ordered that if anyone charged with treason, murder, or felony is found to have been insane at the time of the offence and is acquitted, that person must be "kept in strict custody, in such place and in such manner as to the court shall seem fit, until his Majesty's pleasure shall be known".²⁸ "And if any person charged with any offence shall be brought before any court to be discharged for want of prosecution and such person shall appear to be insane ... it shall be lawful for such court to order such person to be kept in strict custody ... until His Majesty's pleasure be known".²⁹

The only place known to the law of Scotland for the confinement of a criminal or dangerous pauper lunatic was the common jail, thus making it difficult for magistrates making committals. Sir William Rae waged war in Parliament on behalf of criminal and pauper lunatics, and in 1816 reported to the High Court of Justiciary "There is at present no provision for the custody of criminal lunatics, the inconvenience of which

is felt to a great degree. Such persons must either be left in jail or entrusted to the uncertain care of friends and the freedom which many of those enjoy has often had effect on deranged persons in the commission of crimes. There ought certainly to be one department in Scotland appropriated to Criminal lunatics to which they should all be sent and from whence they ought never to be allowed to depart while in life".³⁰

In 1826 Rae, now Lord Advocate, again drew the attention of Parliament to the state of the prisons in Scotland. A committee was appointed and reported that the "state of the prisons is very defective in point of security, accommodation and management".³¹ Nothing was done. The Act of 1829 "directing reports to be made respecting gaols in Scotland" only repeated well-known facts. But Mr. Hall, Inspector of Prisons, in 1836 reported in detail the circumstances of the prisons and urged that "A lunatic asylum be created for the reception of all lunatic prisoners in Scotland".³²

The Prisons (Scotland) Act 1839 laid down that provision must be made for criminal lunatics, and the Report for Prisons in Scotland 1840 ordered part of the General Prison, Perth, to be fitted up for insane prisoners. In the earlier part of the century it will be noted that all the Scottish asylums and private madhouses were built by private enterprise and voluntary subscription. Now the Government at last shared the burden.

In September 1840, the "Secretary reported that in terms of the instructions to him contained in the minutes of the Board, 11th Aug., to take measures for the removal as soon as possible to a Lunatic Asylum of all Insane or Lunatic Criminal Prisoners, he had communicated with the Prison Board of the County of Edinburgh relating to the removal to the Royal Lunatic Asylum of Dundee of George Waters, an Insane Prisoner"³³ in Edinburgh Prison. He was convicted of murder in 1831, and found to have been insane at the time when the offence with which he was charged was committed, and therefore ordered to be detained in the Tolbooth of Edinburgh, "until his friends should find sufficient caution to keep him in such safe custody all the days of his life as might secure himself and others of the lieges from harm".³⁴ 1840 found him still in Edinburgh Prison. The County was to defray the costs, "reserving all competent right of relief of expenses incurred in the custody and maintenance of the prisoner against his own estate or funds or otherwise".³⁵

Although great advances had thus been made in the more humane treatment of lunatics, yet the conditions in which these lunatics, deemed criminal, lived left much to be desired. When the General Prison at Perth was opened in 1842, in addition to long-term prisoners it was also decided to house in a separate building a few insane, epileptic, and juvenile prisoners, and in October 1846 the old part of the prison, known as the French depot, was fitted up as a prison for the insane, a "Lunatic Department", and admitted ten prisoners (7 male, 3 female).

It was converted to that use in 1846, "in consequence of an expressed, or supposed desire, on the part of the Managers of the chartered asylums, to be relieved from the care of criminal lunatics."³⁶ In 1855 there was accommodation for 35 males and 13 females, and there were 21 males and 6 females living in very gloomy flagged cells with barred windows and 1-4 beds in each. The cold was intense and baths were allowed only once a month. The whole arrangements are made principally with a view to the security of the patients, and scarcely, if at all, with reference to their treatment as sufferers from disease".³⁷ For example, 1856 found three patients under restraint: "One had an iron chain placed round his waist, to which one hand was fastened; another had a hand fastened in a similar way and his legs were hobbled by rings placed round the ankles, and connected together by an iron chain. The legs of the third were restrained in the same fashion".³⁸

The building continued to house the insane until 1867 when it was handed over to the Deputy-Governor and Officers, and the insane moved to what had been opened in 1859 as a juvenile prison. Later, in 1879-81, the Prison Commissioners for Scotland built a new building for female lunatics, leaving the male lunatics in the existing building, and placed both under the charge of the Medical Officer of the Prison.³⁹

A General Register of patients in asylums from 1805-December 1862 shows a list of asylums and patients, private or pauper, when admitted and when discharged. Sometimes pauper lunatics were removed speedily to the Poorhouse. An entry for 1827 shows a pauper female admitted to Dundee Royal Asylum and

removed the same day to Dundee Poorhouse, where she was discharged or died in 1865.⁴⁰ Sometimes relatives were not above getting rid of unwanted "unfortunates" to pauper asylums, and the Madhouses (Scotland) Bill 1841 tried to stop this: "Anyone who sends without licence any furious or fatuous person, or any lunatic, or any person as such, to the custody or keeping of any person having or keeping a house for the reception of furious or fatuous persons -- shall pay a penalty of £200"; and persons convicted of receiving lunatics without a licence could be imprisoned for three months; thirdly, a sheriff on application of the Procurator Fiscal could commit dangerous lunatics into safe custody, "where any furious or fatuous person or lunatic shall have been apprehended charged with assault or other offence inferring danger to the lieges ... or shall be found at large".⁴¹

The Lord Advocate, moving the second reading of the Lunatic Asylum (Scotland) Bill, May 1847, reported "the most startling facts relating to want of accommodation for pauper lunatics in Scotland".⁴² In no less than 24 counties in Scotland, including Argyle, Ayr, Clackmannan, Kincardine, and Peebles, there was absolutely no accommodation for lunatics in the shape of public asylums; and where they did exist their accommodations were generally very inadequate. "There exist in Scotland 3,410 pauper lunatics supported in whole or in part by parish relief; of these 1,619 paupers were accommodated in asylums in different parts of the country; for the remainder, 1,791 of these unfortunate persons there was not a cell in any asylum, public or private, in any part of Scotland; and it was to the way in

which they were maintained in the dwellings of their relations and friends that he now wished to call the attention of the House". From a table of Scottish counties the Lord Advocate showed 8 public and 25 private establishments for lunatics, and the total number of patients was 2,417, with the number of pauper patients being 1,619. The rate per head for the maintenance of pauper lunatics in each establishment varied between £26 and £14, while those pauper lunatics living with their families had a yearly sum allocated varying from £3 or £4 to the princely sum of 14/3d. "Was it possible", asked the Lord Advocate, that those "who had such a miserable pittance could exist in any state but that of the greatest misery and degradation painful to contemplate?" He had found out "the most distressing particulars ... Many of these poor creatures were confined in dungeons chained on their beds of straw and lived on little better than garbage. In fact it was impossible to feed them on wholesome food at a rate of £3 or £4 a head. A few cases taken from the report of the Poor Law Commission Enquiry for Scotland would show how pitiable was the lot of the latter class of lunatics, and he quotes: "John Livingston, a violent maniac, lying upon straw on a wooden floor in a loft above his brother-in-law's smithy. He is very ill just now ... has been a lunatic for eight years. He is obliged to be constantly chained". Another, Betty Fraser, aged 40, an unmarried maniac, taken charge of by her parents, "was kept in constant confinement in a garret over the room in which they lived ... £4 a year was allowed for Betty Fraser's support.

She had been kept for many years confined. She generally lay in bed with a blanket ... She was very violent if anyone went into the room and would attempt to escape when the door was opened. She was never washed and her food was put in for her at a hole in the wall". Alec Anderson, aged 25, was described as "fatuous and sometimes violent". His allowance was 2/6d. a week and he lived with his widowed mother and sister. He was "confined in a bed which is boarded up so that he cannot get out. He has been kept in this way for nearly six years. He sometimes gets out of his box-bed and is with difficulty got back. He is outrageous at times and threatens his mother and sister. They wouldn't object to his being sent to any asylum. His food was put through the door".⁴³

It is hardly surprising that these unfortunate men and women were violent and tried desperately to escape from their coffin-like prisons. The Lord Advocate had many other similar cases to cite, and he referred to Dr. Browne of the Crichton Asylum, Dumfries, who reported on the state in which pauper lunatics had been brought to his asylum. The mode in which they had been treated at home was "entirely inconsistent with their comfort and care and with the dictates of common humanity. They were generally brought bound, galled, in a state of shocking filth, crouching, with their limbs contracted, showing that they had been long confined or had been long in bed". The Lord Advocate made an impassioned plea to the House, deploring that "such a state of things should have existed up to the present moment in a country like Scotland", and expecting the House to

end such evils. If the Bill was passed it "would remove a great reproach and gangrene from the social system of Scotland".⁴⁴

Independent efforts besides those of Parliament were made on behalf of lunatics. "The Alleged Lunatics' Friends Society", founded in 1845 and supported by voluntary contributions, declared: "This Society is formed for the protection of British subjects from unjust confinement on the grounds of mental derangement, and for the redress of persons so confined; also for the protection of all persons confined as Lunatic Patients from cruel and improper treatment".⁴⁵

Many doctors, however, angrily opposed the Bill on the grounds that the powers given to the sheriff to enquire into the "conduct" of the superintendents, medical persons, etc., "are painfully inquisitorial",⁴⁶ and that powers conferred upon the Inspector General reduced doctors to the "position of attendants and clerks". The heritors too were full of ire. At a special General Meeting of the Commissioners of Supply for the Stewartry of Kirkcudbright and other heritors of the Stewartry, all agreed that the Bill should be opposed as unnecessary, and that "by the Poor Law Statute for Scotland the Board of Supervision of the Poor is entrusted with the duty of providing for due accommodation and treatment of insane and fatuous poor ... and that proceedings ... of the Board ... have been calculated to remove all just grounds of complaint".⁴⁷ The Heritors declared "altogether uncalled for" the provisions in the Bill for transferring the superintendence of the Lunatic Poor from the Board of Supervision to a central Lunatic Board in Edinburgh.⁴⁸

The Lunatic (Scotland) Act, 1857, for regulation of the care and treatment of lunatics and for the provision, maintenance and regulation of Lunatic Asylums in Scotland, was brought in by the Lord Advocate, Sir George Grey. It set up a General Board of Commissioners in Lunacy for Scotland, with offices in Edinburgh. Two commissioners were to inspect, at least twice yearly, all public, private, and district asylums and every house in which any lunatic was detained. These paid commissioners "may once or oftener in each year ... visit any Prison where a Lunatic is and inquire into conditions. Also all Poor-houses which house Lunatics, and inquire into food and conditions".⁴⁹ Sheriffs and J.P.s were to inspect and report back to the Board, all private asylums were now to be licenced by the Board, and lunatics were to be admitted by two doctors and a sheriff's order. With regard to District Asylums it was decreed that "with a view to erection of Asylums for Reception and care of Pauper Lunatics ... Scotland shall be divided into the Eight Districts or Divisions ... The expense of District Asylums to be paid by Landward Parts of Counties and Burghs respectively".⁵⁰ "Every Pauper Lunatic to be held to belong to the Parish of his settlement at the time the order of his reception to the Asylum was made",⁵¹ and the expense of his maintenance in the District Asylum was to be defrayed by his parish. With respect to dangerous and criminal lunatics, the sheriff could commit with a medical certificate to a "place of Safe Custody either in the county or in the adjoining

county. If insanity stands in bar of trial",⁵² the lunatic must be kept in strict custody.

The following statistics applied to Scotland in 1857:

Private lunatics residing with relatives:	1453
with strangers:	297
alone:	<u>50</u>
total:	1800
Pauper lunatics residing with relatives :	1217
with strangers:	640
alone:	<u>141</u>
total:	1998
Total:	3798. ⁵³

"Criminal lunatics or those lunatics who pass through the prisons may so far as respects legal method of disposing of them be classified as follows:

1. Proved to be insane in bar of trial.
2. Proved to be insane in bar of punishment.
3. On trial acquitted on the ground of insanity when the act was committed".⁵⁴

These three classes were to be kept in strict custody until her Majesty's pleasure be known. The usual practice was to commit to custody in the County Prison. In one case, tried at Perth Circuit, the court committed a lunatic to the General Prison, and the Board recommended that he should be left there. Previously, "the Prisons Board in exercise of their statutory powers ... removed these classes of prisoners to a Lunatic Asylum or to the General Prison. The plan now generally pursued is to discover in the first place whether an asylum or the General Prison is the better

destination".⁵⁵ The next classes of cases cited were:

4. In prison charged with an offence and certified on medical authority to be insane.
5. In prison under sentence, supervening insanity certified on medical authority".

In (4), the Prisons Board had power to remove such prisoners either to an asylum or to the General Prison. In (5), when insanity supervenes the lunatic might be in a local or general prison. If the former, he was removed on statutory certificate by two medical men; if the latter, he was transferred from the prison proper to the Lunatic Department on the Certificate of medical officers. When sentences expired and the lunatics were to be liberated, the Procurator Fiscal was told that "he may provide for public safety as liable to be affected by the liberation of a madman".⁵⁶ But, "Dr. Malcolm, the visiting physician of the General Prison, ... questions whether in the general case, anything is done for the public safety and believes that the prisoners are thrown loose upon society". The year before, "in two instances dangerous lunatics were reported to be in Prisons where they had remained for weeks after a warrant was granted for committing them to an Asylum, because there was no Asylum open for their reception. The Board consulted Counsel on the point, but did not succeed in finding any method of extrication should such a difficulty again occur".⁵⁷

"It will be seen from the general tenor of the above statement that there is a variableness and dubiety in methods of legally disposing of criminal lunatics which naturally

occasions much delay".⁵⁸ "The expense of their maintenance when disposed of is also subject to dubieties and variations".⁵⁹ "Removals ordered by the Prisons Board may be either to asylums or to the General Prison. They have no power to enforce reception in an asylum, their authority is to contract 'for the close and safe custody and maintenance of such insane or lunatic prisoners'. The practice under this clause, established before the opening of the Lunatic Department of the General Prison in 1846, was that the County Board paid for the maintenance of the lunatics in the first place, and recovered the amount from their funds, or in case of paupers, from the parish. There is a like recourse for their maintenance in the General Prison, but as the establishment is supported by the Government it is not enforced".⁶⁰ It is pointed out that there is a "natural desire on the part of the local authorities to have Criminal Lunatics removed to the General Prison rather than to Asylums".⁶¹ But, "It is not within the scope of the present Memorandum to enquire whether the General Prison or a Lunatic Asylum is the better place of custody for criminal lunatics, but it may be proper to notice that there is often no choice in those instances where Prison Boards see an Asylum preferable. The Managers of Asylums have great objections to the terms 'close and safe custody' as a condition".⁶² Should any views be entertained about the removal of criminal lunatics to an Establishment for their reception in England, it may be of importance to keep in view that with the exception of one special class of cases, there seems to be no law for conveying a Criminal Lunatic across the border. The exceptional class are convicts sent to

transportation or penal servitude. The Secretary of State has by special statute power to remove convicts to any prison in Britain. In one instance where it was desirable that an insane male convict should not remain in the General Prison, the Secretary of State at the desire of the Board, granted a warrant for his removal to a prison in England, that he might be thence transferred to Bethlehem".⁶³

The "Daily Courant" of April, 1860, referring to the second Report of the Scottish Lunacy Board, recalls "the frightful state of matters, disgraceful to a Christian land, revealed several years ago as to the condition of a large portion of the pauper insane population of Scotland, and what righteous indignation it excited at the time". The writer points out that many districts have not obeyed the Lunacy Act and the Lunacy Commissioners have no powers to compel the carrying out of the Act. The Commission's report estimated that asylum accommodation to meet the present requirements in Scotland was for 4,353 persons, whilst the number estimated on 1st Jan., 1860, as accommodated in asylums and poor-house lunatic wards is but 3,424, leaving 929 patients unprovided for. "A very considerable number of pauper lunatics amounting last year to nearly 800, are still accommodated in poor-houses". These should be transferred to asylums. "This poor-house lunatic ward system is kept up partly from lack of accommodation elsewhere, but partly also from the idea which the Parochial Boards have that it is an economical arrangement". The "Courant" maintains that despite the Commissioners' conscientious visiting of public and private asylums, poor-house lunatic wards and private houses, there are still glaring abuses, and it gives

the example of a private patient at Banff, "chained by the ankle to a corner of the chimney", and of an unfortunate woman in Caithness, existing in a strait jacket roped to her bed: "for several years she is said, without intermission, to have been subject to this inhuman treatment". The "Courant" deplores "the melancholy fact that insanity is greatly on the increase in Scotland", as in France and England. In 1843 the number of pauper lunatics in England and Wales was 16,764, rising in 1859 to 30,318. In Scotland in 1847 the number was 2,650, rising in 1858 to 5,564, and in 1859 the number of insane, pauper and private, was 7,878. The increase was at a much greater ratio than the increase of population. "Patients labouring under insanity increase upon our hands faster than we can provide accommodation and means of treatment for them".⁶⁴

In 1861, the Dangerous and Criminal Lunatics (Scotland) Bill, to amend the Law relating to the Apprehension and Custody of Dangerous and Criminal Lunatics in Scotland, declared that when any lunatic was charged with an offence dangerous to the lieges, it was lawful for the sheriff, with a medical certificate, to commit him to an asylum in his jurisdiction or outwith. Also, if a prisoner, "within 60 days of the expiration of his sentence in the General Prison, be found insane, and that Insanity of a kind which renders it advisable that he should be detained in the Lunatic Department of the General Prison rather than in a Lunatic Asylum, then the Secretary of State will authorise him to be detained; ... if two doctors find a prisoner in a Local Prison to be insane, although his sentence is less than nine months, yet he shall go to the General Prison". Also the term "Lunatic" was now to include "every Prisoner of unsound mind and every Person being an Idiot".⁶⁵ By paragraph LXXXVI of the Lunacy

(Scotland) Act, 1862, "if anyone, having been charged, is ordered by the Court to be kept in custody till Her Majesty's Pleasure be known, he may be removed to and detained in the General Prison at Perth".⁶⁶

By Paragraph VI of the 1866 Lunacy (Scotland) Amendment Act, if a lunatic escapes, the order for his reception will remain in force, "provided always that such Lunatic ... shall return or be brought back to such Asylum or House within a Period not exceeding Twenty-Eight Days from the day on which he left";⁶⁷ and by paragraph VII the order for detention of a lunatic was to expire in three years and to be renewed yearly unless the asylum superintendent granted a certificate saying that his detention was necessary for the safety of the public.

Later correspondence from many medical superintendents of asylums in Scotland asked for the repeal of Clause VII (above), but a hand-written copy of the minutes of the General Board of Lunacy refused this, saying that the difficulties resulted not from the carrying out but from the non-observance of the said clause.

Paragraph 4 of the Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871, enacted that if two doctors declared a prisoner in the General Prison to be insane he could be removed to any chartered asylum, and if under sentence not yet expired to be paid for in the accounts for maintenance of the General Prison. And by Para. 6, if a prisoner became insane in a local prison, if certified by two doctors, the sheriff could send him to a lunatic asylum as above.⁶⁸

A letter from Hill Burton, Prison Manager, states, "A few years ago there was such a pressure in the department in the General Prison that Lunacy Commissioners urged enlargement ... the Government won't thank us if we request money to build houses for people who are wanted at home and would be better there ... Then it may happen any day, as it repeatedly has, ... that an untried prisoner is seized with acute and dangerous mania in some small remote prison, where he must remain although it is as unfit a place for his condition as can be devised."⁶⁹

A printed pamphlet on dangerous lunatics has a table showing the number sent to asylums, at the instance of the Procurator-Fiscal, as dangerous lunatics from 1861-70. In 1861 the number was 27, falling to 10 in 1865, and rising to 36 in 1868 and 30 in 1870. Twenty-three of the latter 30 came from Lanarkshire, Renfrewshire and Dunbartonshire. It is noted that persons falling into the statutory category of "dangerous lunatics, do so mainly from having been arrested by police and by no one coming forward to undertake their being placed in asylums. Where it is not clear that they will become chargeable to their parish, inspectors of the poor hesitate to interfere lest they should exceed their duty and be made liable for damages in an action at law".

"As a rule, persons who are dangerous lunatics in the statutory sense are maintained at the expense of their parishes. They thus become pauper lunatics who ... should be sent to the asylum of the district in which the parish, charged with their maintenance, is situated". Frequently a lunatic is taken up by the police not within his own district and therefore sent to some other asylum.

"During 1870, nine patients were admitted into the Lunatic Wards of the General Prison, Perth. Those nine were guilty of murder, violent assault, or were thieves by habit and repute. Of those nine (four males and five females) in 1870, one male recovered and two males and four females were "discharged, not recovered". The discharge of non-recovered patients follows on the expiry of sentence. The six discharged were transferred to local prisons from which four were sent to ordinary asylums, one was handed over to the superintendent of police, and one to the care of parochial authorities. Thus, "the manner of dealing with criminal lunatics in Scotland does not seem to rest on any very fixed rules but to depend very much on the views taken by local county authorities".⁷⁰

With regard to alien lunatics during 1870, 28 pauper lunatics were removed from Scotland for having no settlement there - 7 to England and 21 to Ireland. There were seven private patients removed, namely six from asylums and one from a private dwelling. Of these, four were sent to England, one to Ireland, one to France, and one to Jamaica.

Correspondence from the Prison Managers in Castle Terrace, Edinburgh, to the Home Office, Jan. 1872, concerns the disposal of inmates of the lunatic department of the General Prison, under the Criminal and Dangerous Lunatics Act, 1872, and suggests that "it is desirable that all criminal lunatics disposed of by tribunals of Scotland should be detained in Scotland, both because the native establishments are likely to be better adapted to their habits, and because the means of an accurate comparison of the relative amount of insanity among

criminals and the cost of the treatment of Criminal Lunatics in the two countries is apt to be lost, if the Criminal Lunatics of the one country are detained in the other".⁷¹

The letter goes on "The inmates of the lunatic department of the General Prison are in two classes:

1. Persons who have been placed at H.M. disposal on account of lunacy and are certified as sane.
2. Persons who are still insane, but whose insanity is certified to be of a kind which can be properly treated in a lunatic asylum".

Of the first class, "it is understood that persons of this class, not being insane, cannot be received into lunatic asylums in Scotland". Of the second class, the chief difficulty is over liability for maintenance "where the parish disputes the settlement".⁷²

Burton states that "The annual cost per head of the lunatics of the lunatic department of the General Prison is estimated at £25". He refers to some inmates about to be discharged and placed in the hands of relatives, and to the fact that the prison is very overcrowded.⁷³

The 10th Annual Report on Prisons states that the daily average number of lunatics in detention in the General Prison in 1868 was 48, in 1869 was 50, and the total expense of the lunatic department was £1250. The comparative cost of a lunatic at the English Broadmoor was £67. 4. 9 in 1868 and £64. 8. -. in 1869.⁷⁴

The 11th Annual Report on Prisons states that because of overcrowding it is a relief that the 1871 Act sanctions that those no longer insane (from drink, puerperal fever or violent

mania) should not be detained in asylums. But the Report feels that it is unsafe to throw them on their respective parishes, so they are ordered to be in the charge of friends or relatives, and this conditional liberation by the Secretary of State must be inspected by doctors periodically, and the Secretary of State could take them in again.⁷⁵

A letter from Whitehall to the Lord Advocate dated April 1874 included a list of 12 inmates of Broadmoor Criminal Lunatic Asylum whose sentences have expired. "These persons who were all convicted in Scotland, were removed to Broadmoor from places of confinement in England - and would, had they been convicted in England have been removed under 30 and 31 Victoria, c. 125 to lunatic asylums of the Counties in which the offences were committed. But as neither of these statutes apply to Scotland, Mr. Cross is doubtful whether he can avail himself further of their provisions in dealing with these persons whose continual detention at Broadmoor is not only a heavy charge to the State but excludes from the asylum other patients for whom accommodation there is urgently required;" and the letter goes on to ask "whether there are any means by which these insane persons can be legally removed to Scotland or otherwise disposed of". A scribbled note at the foot of the page by the Lord Advocate says that, "without further legislation it appears to me that the Criminal Lunatics in question cannot be removed from Broadmoor to Scotland. I think it is well deserving of the consideration of Mr. Cross whether, as

Mr. Walker suggests, the maintenance of all criminal lunatics should not be made a charge on the Imperial Exchequer".⁷⁶

The Lunacy Districts (Scotland) Act, 1881, made provision for altering and varying the lunacy districts in Scotland. The 1857 Act had divided Scotland into districts and given the General Board of Commissioners in Lunacy power, on application of the prison board of any county interested, to alter or vary the said districts. But by the Prisons (Scotland) Act, 1877, the prison boards in the counties ceased to exist and there was no legal authority with power to apply for altering districts. Therefore the 1881 Act gave the Lord Advocate power to alter districts on application of the General Board of Lunacy. This was followed in 1882 by the Lunatic Districts (Scotland) Act, giving the General Board power to alter districts subject to modification by the Secretary of State.⁷⁷

In 1884, a letter, being "a memorandum on the Criminal Lunatics Bill" by Dr. Mill, described the Lunatic Department of the General Prison as very overcrowded. The Commissioners in Lunacy are pressing for a great increase in accommodation ... "in fact for a recasting and enlargement of the whole arrangement. Such a project would cause a great, immediate expense in building and perhaps it would be found incompatible with the present economic arrangement by which what is virtually a national establishment for criminal lunatics is kept up as a men's department of the General Prison. The first arrangement is to provide for these 'quasi-lunatics' as they are called who are not insane.

These are the most dangerous inmates of the establishment as they can plot and combine, while the insane are hardly ever known to act together. There is always danger, of course, of a relapse, and in handing any one of them over to relations, conditions would be required for periodic medical report or otherwise according to circumstances. Such a measure has now been in force in England for some years". Dr Mill pointed out that the object of one or two clauses was "to enable the General Prison to board out at government expense those that can be safely boarded out". Another object of the Act was to remove an important difficulty. For when "a prisoner becomes ... insane in a local prison, one of the worst possible places for proper treatment, and if the case is not one for the Lunatic Department of the General Prison, the only remedy ... is that by which on a medical certificate, the Sheriff applies to the Secretary of State, a very tedious process".⁷⁸

The 1884 Act itself stated in Para. 1: "Where a prisoner is certified insane, the Secretary of State may, and if the prisoner is under sentence of death, shall, direct the prisoner to be removed to an asylum ... and be detained there as a criminal lunatic until he ceases to be a criminal lunatic", and (22) "A person shall cease to be a criminal lunatic if he is remitted to prison or absolutely discharged ... The expenses of maintaining a criminal lunatic in an asylum ... shall be defrayed by Parliament".⁷⁹

The Annual Report of the Prison Commissioners for 1898-1904 states: "The Lunatic Departments attached to Perth General Prison are legal places of detention for all descriptions of criminal lunatics".⁸⁰

The Preface says that "The Commissioners are satisfied that there remains nothing in the present system of prison discipline to disturb the mental balance of anyone in confinement, but there are many who come into prison suffering from mental debility".⁸¹

The Lunacy Commissioners' Report for 1898 states: "The establishment" (Criminal Lunatic Department) "was found in excellent order: the inmates are suitably provided for, and the way in which they are treated is in every way suitable and satisfactory". During the previous year a system had been introduced under which "by earning marks, the lunatics may be able to purchase small adjuncts to their regular diet such as jam and biscuits as well as tobacco".⁸² Some of the lunatics who had been longest in the Department were transferred to ordinary asylums, as they were found no longer to require the special treatment of a Criminal Lunatic Asylum.

The Annual Report of the Prison Commissioners for 1904 has a report by the Medical Superintendent for the year ending 1904 on the Criminal Lunatic Department. He is glad to report that "mechanical restraint has not been found necessary in their treatment".⁸³ Dances and concerts were given at intervals during the year. There were 64 lunatics in the Department in 1904 - 52 males and 12 females. Insanity was found in 44 cases on admission in 1904, and 13 more were found insane during sentence. They were transferred to asylums. Thirty-nine more were so mentally feeble that although they could be treated in prison they were unfit to look after themselves when discharged.

Therefore they had to report to the Inspector of the Poor so that he might take charge of them when freed. At the end of 1904 there were 46 male and 4 female criminal lunatics of whom the great majority were charged with murder. "The separation, lately effected, of the troublesome and violent lunatics from the others has had excellent results".⁸⁴

By the Prisons Act 1904 the distinction between the General Prisons and the Ordinary Prisons was abolished. The Royal Commission 1908 on the Care and Control of the Feeble-minded recommended that the General Board of Lunacy in Scotland be designated the Board of Control and should undertake the supervision of all i.e. idiots, imbeciles, epileptics, and that the word "lunatic" should be discontinued and "hospital" be substituted for "asylum". The Board of Commissioners in Lunacy "survived as a separate organisation until 1913 when, by the Mental Deficiency and Lunacy (Scotland) Act, it was renamed the General Board of Control for Scotland. Its composition was slightly altered under the Re-organisation of Offices (Scotland) Act 1939, and since then its organisation has been more closely integrated with that of the Scottish Home & Health Department".^{84a}

The mention of "dances and concerts" is significant as illustrating the fact that criminal lunatics were also benefitting from the more humanitarian climate of the time. There were annual balls, games of all kinds, lectures, concerts and even the "cinematograph" shown for the first time in 1902,⁸⁵ all aimed to relieve the monotony of the lunatics' daily routine.

Important changes were taking place in Scotland in the care and treatment of lunatics. From 1881 the trend of public and scientific opinion laid greater stress on the mental state of the criminal and its scientific treatment rather than the punishment of his crime. Real efforts were being made to discontinue the practice of locking all the doors all the time, and to present the attendants in the guise of nurses rather than of gaolers. "Needless to relate the new ideas did not meet with unqualified approval. It required courage to adopt the system in the face of public prejudice, and adverse public criticism. A number of superintendents preferred to continue with the strait jacket, manacles and chains. With such means no blame for any incidents could be attached to the person in charge."⁸⁶ A medical superintendent had been appointed to the Criminal Lunatic Department in 1878, and "it was at this point that it began to develop as a forensic psychiatric hospital."⁸⁷

Parliament had discussed, before the Great War, the possibility of a separate State Asylum, but it was not until the mid-nineteen thirties that the ideas crystallised and a site was selected at Lampits Farm, Carstairs. In 1935 Parliament approved the creation of a Criminal Lunatic Asylum and State Institution for Defectives as a joint establishment with rehabilitation and security the aims. The State Institution housed mental defectives of dangerous, violent and vicious propensities, and the Criminal Lunatic Asylum persons of unsound mind detained during His Majesty's Pleasure. The buildings were finished in 1939 but, the war

intervening, they were used as a military hospital until 1948. It was decided that a State Institution for defectives should be built separately from the State Asylum, and this was finished in 1957.⁸⁸

About 100 patients, the great majority men, were in Perth Criminal Lunatic Department from 1948 to 1957. With slatted wooden beds fixed to the floor, narrow windows high in the walls, a general air of gloom and decay brooded over the place. "I was ashamed to bring folk into the Admission Block", said one officer.⁸⁹ By the 1952 Rules for Prisons, the inmates of the Criminal Lunatic Department were not to be subjected to penal discipline, but to be "treated as patients under curative and alleviative treatment".⁹⁰ In October 1957 Section 63 of the Criminal Justice (Scotland) Act 1949 came into operation, by which the care and custody of criminal lunatics, now called "State Mental Patients", was taken over from the Scottish Home Department by the General Board of Control. 99 male patients were transferred from Perth to the State Mental Hospital at Carstairs in a fleet of buses, accompanied by doctors, nurses and a police escort, the Chief Constable of every town en route being advised of their approach.⁹¹ The female State mental patients continued at Perth, now designated "a ward of the State Mental Hospital".

The Annual Report of the General Board of Control for Scotland in 1960 remarked that there were far more mentally ill in 1960 because of the increasing stress and strain of modern life, but that higher numbers could be partly accounted for by earlier diagnosis.⁹²

By the Mental Health Act 1960 the General Board of Control was replaced by the Mental Welfare Commission for Scotland. It abolished the State Mental Hospital and the State Institution for Defectives and set up the State Hospital under a management committee responsible to the Secretary of State.⁹³

In 1973 there were 411 beds at Carstairs, 37 being for females. All patients have single rooms. Accommodation is composed of 16 villa-type wards with no distinction, other than for treatment purposes, between the mentally defective patients and those mentally ill. The patient population in 1973 was in a ratio of two-thirds who are mentally ill to one-third who are mentally defective. Admission to the hospital may be from the Courts, from the Prison Service, or from ordinary mental or mental deficiency hospitals.⁹⁴

Authority for detention of patients falls into two categories. First, "State" patients, i.e. those admitted from the Courts as a result of criminal proceedings, under murder restricting discharge. These may not be discharged, transferred or given leave of absence without the Secretary of State's consent. Patients transferred from prison are also "State" patients during the currency of their sentence. Second, "Non-State" patients, i.e. those admitted (a) following criminal proceedings but without an order restricting discharge; or (b) as ordinary detained hospital patients - usually on transfer from a National Health Service hospital where they have proved unmanageable. These "Non-State" patients may not be discharged by the consultant without the consent of the Management Committee. These patients have a regular right of appeal to the

Sheriff against their detention. The Mental Welfare Commission may also, within the terms of the 1960 Act, order the discharge of such a patient,⁹⁵ (and has done so).

Patients are not normally discharged from hospital direct to the community but are generally transferred in the first instance to a National Health Service Hospital, and the responsibility for future disposal then passes to that hospital. The average age of patients is 32 years, and based on statistics over 3 years, the average length of stay is about $6\frac{1}{2}$ years. At the end of 1973 there were 216 mentally ill (both sexes) and 119 mentally defective (both sexes) in the State Hospital.⁹⁶

All the usual forms of psychiatric treatment are provided, and crafts of woodwork, printing, rug-making, maintenance of grounds and gardens are carried out by the patients. The Education Department was established 1969, and classes in basic education began with the high grade mental defectives, and in 1971 the mentally ill patients were given Higher Education mostly by correspondence. The local Education Authority also give classes. There are monthly dances, regular cinema shows and concerts, football and other sports.⁹⁷

Personal clothing is allowed only to a limited extent. The patients are given money to bring their weekly allowance up to £1.40 (some have National Insurance, some have private means); they

also earn incentive payments for work though they may not handle cash.⁹⁸

The Management Committee of 15 members manages the hospital in accordance with the 1960 Mental Health Act. The Physician Superintendent, who is also the Professor of Forensic Psychiatry at Edinburgh University, is responsible for the day to day running of the hospital. "The Physician Superintendent, Professor Kenneth Macrae, agrees that, in all probability, the hospital has more murderers under its roof than even the toughest of Scotland's prisons, and 'As time goes on, with the abolition of capital punishment there will be many, many more long-term patients who have been on a murder charge.' Professor Macrae emphasised the word 'patients'. 'This is a hospital,' he adds. 'It is not a prison, we have nurses, not warders.'"⁹⁹

That is a good and hopeful note on which to end this chapter. The path of the mentally afflicted has been an arduous one from the days of poor Robert Ferguson, days of lying in chains on straw, in chill darkness; from the miserable neglect and starvation of the mid-nineteenth century through the Acts of the later nineteenth and early twentieth centuries, each succeeding one clearly demonstrating the strenuous efforts being made to protect the lunatic and to pass legislation aimed at his well-being and better treatment. So to the present, and the pleasant single rooms, bright colours, education, crafts, games, dances, concerts. The trend is clear, and the modern attitude to those, no longer called "lunatics", is best expressed by Professor Macrae emphasising the word "patients" and repeating his statement "This is a hospital, it is not a prison."

CHAPTER VIII - 1908 TO THE PRESENT

"Punishments are inflicted, that crime may be prevented, and crime is prevented by the reformation of the criminal".*

One of the conclusions which emerges from this study is that penal practice and attitudes tend to have developed by way of haphazard reaction to particular problems arising from time to time - problems which may persist indefinitely, or become either more or less demanding, or at some later date disappear altogether to be replaced by new ones. Neither practice nor attitudes will necessarily keep abreast of these changing considerations, and indeed some time-lag is usually inevitable, so that, more particularly in a rapidly changing society, the penal system may be said to be continually out of date.

On July 10th 1910 the House of Commons heard the Home Secretary, Mr. Winston Churchill, say that, "The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country."¹ What then is the "mood and temper" of the twentieth-century public towards the treatment of crime and criminals? It is undoubtedly reform-orientated, emphasising rehabilitation as opposed to punishment. This attitude has only gradually emerged. After 1877, when all power over prisons had been vested in the Central Board, the result was uniformity of routine and treatment in all prisons, but it is questionable to what extent that was a gain. It certainly meant more economic administration but it made experiment in reform very difficult. A system which discourages independent thought is not likely to lead to rapid progress. But official complacency with regard to the repressive nineteenth-century gaols was shaken by the Gladstone Report in 1895, and was to be again by the reaction of the more intelligent among the conscientious objectors in the Great War.

The nineteenth-century aim to make prison life so unpleasant that offenders would be deterred from committing fresh crimes demonstrably did not succeed. So that it was for practical as well as humanitarian reasons that increased emphasis came to be put on the rehabilitation of offenders in custody.

But on the eve of the Great War, life and conditions in the prisons were still harsh and the buildings themselves the same dismal, forbidding fortresses of the era when they were built. The medical officer at Glasgow Prison in 1912, J. Devon, described life there.² The convict's bed was a wooden shutter hinged to the wall so that it could be folded up during the day; males under 60 years were given no mattress for the first 30 days; the untried were clad in brown corduroy and if convicted exchanged these garments for white moleskin. (Broad arrows were now discontinued). The rule of silence was still enforced, though now less rigidly, work being done sometimes in association but without speaking. Devon considered that instead of conversation leading to corruption, as was widely believed, the rule of silence could lead to gradual, steady mental deterioration over a period of time. Silent exercise lasted for an hour, with the older and physically feeble prisoners walking round a slower ring. Swedish drill had been introduced for the female prisoners, which they called the "daft hour" but evidently enjoyed. Untried prisoners could get newspapers and books sent in, and a pint of wine or beer daily, but no cigarettes. There was a library - of poor quality - and occasional lectures and concerts. Every prisoner was given a Bible and a Prayer Book, and the three recognised denominations were

Presbyterian, Episcopalian and Roman Catholic. Convicted prisoners were allowed only one letter and one visit in three months.

Punishments were meted out by the Governor, but if the offender's diet was to be changed or physical discomfort was involved the M.O.'s approval was required.

Even with those grim conditions prevailing there were still many people who asserted that prison was too comfortable. Devon found that the public in general was quite uninterested in prison conditions, but, ahead of his time, he pointed out that people should realise that the treatment of criminals was as much a matter of public health as the treatment of the sick and that it was to the interest of the community that it should be undertaken in such a way as to lead to their reform. He held that prison had a bad effect on prisoners and that when they were turned loose on the community it was advisable to prevent them being liberated in a condition that would make them more dangerous than before conviction. He stated that the prisons had never been designed to reform prisoners - their declared purpose was to detain and punish criminals, and the extent to which they did punish varied greatly with the background of the prisoners.

Although Glasgow Prison was a dreary, cheerless place, an English prison like Dartmoor was much worse. The death rate there was the highest of all the prisons, conditions were very dirty, harsh punishments including floggings were common. The gross overcrowding there had eased somewhat by 1931, but late in that year the Governor was aware of prison unrest and a mutiny broke out in 1932, "the greatest crisis which the Commissioners, staff, and

reformers had ever faced."³ Yet between 1908 and 1949 the trend towards reform grew stronger. In England the prison scene was dominated by Alexander Paterson, and ideals similar to his ^{were} pursued in Scotland. Reform within began with Paterson's appointment to the Prison Commission in 1922. He had begun work on the Borstal system (instituted in 1908 by the Criminal Justice Act of that year) and started the "open" Borstal camp. He applied his new ideas to the treatment of "star class" prisoners (adults in prison for a first offence) and the new "minimum security" prison was introduced.

Churchill in 1909 had asked Paterson to undertake the first attempt to organise state assistance to the discharged convict. Paterson's often quoted aphorism that "Men come to prison as a punishment, not for punishment"⁴ exemplified his strongly felt conviction that deterrence and retribution are achieved by the mere deprivation of liberty. He held that the best way to use imprisonment was to try to turn out the prisoner a better citizen than when he came in. Although society should be protected permanently by the reform of the offender, yet he agreed with Devon that under the existing system "a man is not primarily sent to prison in order that he may be reformed."⁵ Neither staff nor buildings were shaped to that end, and "If the institution (Borstal) is to train lads for freedom, it cannot train them in an atmosphere of captivity or repression."⁶ As long as prisons were built to hold 5000 or more men it was impossible for the staff to know them all, and Paterson urged that 500 should be the limit if the smallest attempt was to be made to reform.

Paterson's impact on prison life was incalculable. His ideals and achievements shaped the trend of future developments in prison reform, and many modern reformers are still seeking to reach his objectives. Specifically he sought to counteract the apathy which overcomes most prisoners in time, by advocating for all a very active life, physically and mentally. He held classification to be essential and urged that the word "prison" or "penitentiary" be abandoned and replaced by at least three different categories of institution, each with a different function and regime. As for sentencing, he thought the very short sentence to be worse than useless, and that six months should be the minimum. He accepted that some men were incorrigible and that society must be given maximum protection from them; the clauses in the Criminal Justice Act 1948 relating to preventive detention were largely inspired by his thought. For the incorrigibles he wanted the indeterminate sentence as the only safeguard for society, though he believed that a man definitely deteriorated after ten years in prison, and thought twenty years or more to be worse than death. "There are cases where it is kinder to break a man's neck in a second than to spend twenty years in breaking his heart".⁷ He thought that confinement in dark punishment cells was worse than corporal punishment, and he was against solitary confinement. Like Howard, Paterson visited many foreign prisons, and some of these visits confirmed his views on the squalor and degrading conditions of many British prisons, which he considered medieval by comparison with America, where, by federal law, no citizen may be confined without a flush toilet and running hot and cold water day and night.

But even before Paterson's appointment in 1922 there had been, during the Great War, agitation for reform, this on the part of the more intelligent and better educated of the conscientious objectors. Those of them who found themselves in prison became ardent reformers, insisting that prevailing conditions were more likely to encourage crime than reform. Like ordinary prisoners they were subject to the rules of the 3rd Division, stricter than those of the 1st and 2nd Divisions, for the privileges of which they did not qualify. These involved strict separation for the first 28 days, visits and letters only after two months, and hard labour in the form of sewing mailbags in silence from six to ten hours daily. Many of them set out to create as much trouble as possible and were therefore often put in close confinement on punishment diet. Some went on hunger strike and had to be forcibly fed, some deliberately courted ill-health by discarding overcoats in cold weather and refusing to see the prison doctor.⁸ When their health deteriorated they were released for a time under the Prisons (Temporary Discharge for Ill-Health) Act 1913.⁹ Nine of them died from natural causes and were raised to instant martyrdom by their sympathisers, although nine deaths in three years in a population of 1200 C.O.s represented a lower death rate than for prisoners as a whole, and an influenza epidemic was a contributing factor.

Among the more vociferous prisoners of this type were James Maxton¹⁰ and David Kirkwood,¹¹ arrested in 1916 for sedition. Among prisoners, C.O.s were more than typically articulate, but their accounts are not necessarily therefore more reliable. Ordinary convicts, generally speaking, accept prison as one of the facts of

life, as an occupational hazard. The C.O.s on the other hand maintained that they had committed no crimes and that it was their consciences that had brought them to prison. This attitude made them particularly awkward prisoners and at the same time perhaps lent their accounts more plausibility than they deserved. But these accounts did at least have the result of stimulating public concern about prison conditions and contributed to the setting up of the Prison System Inquiry Committee in 1919, whose report was published in 1922 as "English Prisons Today".¹²

When we come to consider prison structure and policy at the beginning of this modern period we find that little or no change had taken place since 1877. Control remained the primary organizational task. Sociologists were disturbed by the relationship of the custodial staff structure to therapeutic policies and the consequent mutual hostility between staff and prisoners. There was criticism of the "para-military" structure and the recruitment of ex-service men as officers. It was argued that the latter were neither permitted nor were by training or calibre fit to undertake anything other than custodial duties. When custody and control are the primary concern of the prison authorities the treatment of prisoners is bound to become a secondary concern. But this dilemma is difficult to resolve. Escape attempts raise an immediate public outcry; the prison authorities' job is to protect the public from these dangerous men; why are they not doing it properly?

What sort of person is the typical twentieth-century prison officer? For the posts of governors and assistant-governors, in

1912 no specific qualifications were laid down. At that time and subsequently the appointees were usually retired officers of H.M. Forces, of the rank of say lieutenant-colonel or its equivalent. More recently the pattern has changed and governors have been selected who have risen from the lowest ranks of the prison service, with no professional qualifications, but who have made their way by natural intelligence and force of personality. To-day the pattern is changing yet again and it seems that in the future people with university qualifications either in sociology or psychiatry, are being promoted over the heads of the "ranker" warders and will secure the top posts to the resentment of the latter.

Early in the century warders' wages were low, their terms of service poor, and discipline by their militarily-conditioned superiors severe. Working hours were long and even a trivial breach of discipline was punished by a fine, anything more serious by dismissal. Paterson summed up the situation thus: "Every country gets the prison service for which it is prepared to pay."¹³ He felt that the quality of the staff was very important; they should be men of personality and character. There was no single career which prepared a man for prison service. If the salary of a prison officer "is so low that it can only attract men incapable of finding any other work, the prisons will have a staff consisting of men without character, without intelligence, and without much interest in their job ... if you want to exert an influence on human beings, you must call upon men capable of exerting that influence."¹⁴ Yet in 1955 Wildeblood, a prisoner in Wormwood Scrubs, could write, "...it is not, by its very nature, the kind of occupation likely to

attract the best type of man. Promotion is slow, and leads only to the position of Chief Officer ... If, as has so often been stated, the twin objects of imprisonment are deterrence and reform, the role of the warder is uniquely concerned with deterrence. The propaganda which is used to attract recruits to the Prison Service apparently gives a rather different impression .. young trainee warders who had entered the service hoping that it would give them scope for some form of welfare work or social first aid, but when they discovered that their duties consisted mainly of marching the prisoners around and shouting at them, they resigned in disappointment".¹⁵

More recently still, in 1968, "Zeno", another intelligent, articulate prisoner, who served 9 years in Wormwood Scrubs and other English prisons, took an objective look at the warders. "Most of them should never be in the service, unless they are employed solely as custodians, and the Home Office has announced so many times that this is only one part of the prison officer's job. Unfortunately it is the only part most of them are equipped to carry out".¹⁶ Zeno allows that "there are a few warders of courage and common sense though not particularly intelligent, ... on the faces of the majority of them a look of complete indifference born of an apathetic acceptance of the narrow limitations of the job they do and of their surroundings; on the faces of a few of them, a very few, traces of occasional compassion. These are the men who could change the whole prison service, for they have an empathetic understanding of what it feels like to be imprisoned".¹⁷ But all too often, he asserts, there is "the apathy of second-rate men muddling through a job, perhaps the most difficult job in human relations".¹⁸

What sort of man then does the modern prison service aim to recruit? The official attitude is expressed thus: "While today's Prison Officer needs qualities of humanity, leadership and control, equal importance is attached to maturity, patience, understanding, and a sense of humour. Not everyone, of course, can match up to these exacting requirements or indeed to the service's standards of fitness and education".¹⁹ The candidate must be over 22 and under 35 (unless with long service in the Forces), over 5 feet 7 inches, British, and must not wear spectacles. The notice to applicants says, "Much of his work is routine, including locking and unlocking, supervising meals, work and exercise, but he also has opportunities for assisting in the rehabilitation of his charges by his bearing, example and advice".²⁰ (Many prisoners and staff would question the optimism of the last words). Conditions of entry include:- "Candidates must be of unexceptionable moral character and of undoubted sobriety, and free from pecuniary embarrassment",²¹ and "Preference is given to candidates who have served in H.M. Regular Forces and to those with special trade or nursing qualifications",²² bricklayers, carpenters, painters, plumbers, caterers, clerical workers, "instructors in physical training or gymnastics, or who have had any kind of experience in the control of lads or young men".²³ The applicant has to perform certain written tests but of a very basic standard, which suggests that he requires to prove only that he is not entirely illiterate.²⁴ If he passes these he is interviewed by the Board, submits to medical examination, and if approved does 6-8

weeks' training, usually at an establishment near his home, then goes to a training school for 7 weeks. He is then appointed a Prison Officer for 12 months on probation. Officers at prisons and young offenders' institutions wear uniforms; if at borstal, detention centres or open prisons, they wear plain clothes. They get free quarters (though not at once); they work a 40-hour week, with some week-end work and some night duty. Starting pay is £24 weekly going up to £32 (1973) with extra allowances for a special job. Retirement is at 55, with gratuity and pension.²⁵

It is hardly surprising that there are many grievances felt by officers and that there are difficulties in attracting recruits. As with the armed forces, tied housing remains a feature of prison service. The concept of the hierarchical quarters estate adjacent to the prison remains, essentially in its nineteenth-century form. Irregular hours of work, including evenings and week-ends, tend to make social life centre within the quarters, leading to a greater feeling of isolation. In the U.S.A. the authorities are evidently alive to the disadvantages of the system and the trend is now away from housing staff on the site. But in Britain the practice of building new prisons in the middle of nowhere aggravates this isolation and perpetuates the problem.

Prison officers suffer too from a strong feeling that public opinion is unfair to them and out of sympathy with them and their task. One officer writes, "With the present-day tendency to view even the most violent and dangerous prisoner as a wayward boy and the

hard-dying Victorian tradition of the "screw" as hard, brutal and totally devoid of human feeling, it is far too easy to pass off demonstrations as expressions of frustration over unsuitable staff and repressive regimes."²⁶ While the public is so ready to criticise the prison service as reactionary and inimical to all change, it might be salutary to consider the immense burdens the prison officers have to shoulder. The relationship between keeper and kept is by definition an uneasy one. Basic-grade prison officers and their charges are both of working-class background and probably with some experience of poverty, and both are of limited education. But the former represent the law, the latter the opposite, and the warders therefore instinctively try to stress their superiority, reinforced by the knowledge that they are members, however lowly, of the uniformed hierarchy - an attitude which must intensify the prisoners' sense of humiliation and personal insignificance. Moreover, social workers are being recruited in increasing numbers, and with a short university training and (in the view of the ordinary warder) "half-baked" ideas, are leap-frogging over his head in the promotion race.²⁷ The average prison officer then feels that he is still only a turnkey, playing a purely negative role and doing a job where boredom alternates with tension, "a job with many frustrations and few rewards."²⁸ If he is to be under continual fire from liberal reformers the numbers in the service will thin still more.

In a recent television programme several warders tried to answer the questions why men become prison officers and what they

hope to achieve. A warder at Lincoln Prison, asked why he joined the service, said, "Well, I've always been in uniform. I was seven years in the Navy"; he felt that he could not settle to life "outside". He added, "I'm doing 23 years service, and I think we all get institutionalised." To the same question another gave the answer, "Security. I was made redundant in the engineering works. That's all I came in for, security." The comment was made that the numbers of ex-service men joining are now fewer and one officer said he resented civilian workers, such as welfare officers, in prison. He complained that the warders' work is "only custodial" and "as far as doing anything constructive, there is no scope whatsoever, for psychiatrists and so on take over."²⁹

It seems obvious that a rise in the educational standards of the uniformed staff is called for, along with a wider and more intensive training after recruitment, the more so since many governors are appointed nowadays from their ranks.³⁰ But it is difficult to see how this is to be achieved when at the same time, even with the present rudimentary educational requirements, the recruitment position is giving cause for concern. The official report on Scottish prisons for 1972³¹ anticipated that with the then improving employment situation in the country the future intake was likely to be inadequate to meet the needs of new penal establishments. Employment prospects generally have altered for the worse since that report was issued, but the recruitment problem must remain precarious.

It is worth noting that similar problems bedevil the prison system in America. Jessica Mitford, who has made a study of the situation there, writes, "The character and mentality of the keepers may be of more importance in understanding prisons than the character and mentality of the kept."³² One of the crucial facts is that while the convicts are predominantly black, young, unemployed and from large cities, the vast majority of guards are white, middle-aged (many in their late sixties) and from small rural towns. The latter feature is accounted for by prisons usually being located in isolated areas, where they tend to become vital to the economy of the district and draw on the local population for their personnel. Some are near Army bases, and in these most of the guards are ex-service men.³³ In effect therefore many become guards because there is no other employment available locally. (Jessica Mitford would also have it that the occupation appeals to those who like to wield power over the powerless, and to persons of sadistic bent.) Gresham Sykes cites the example of New Jersey State Maximum Security Prison, where 50% of the guards are temporary employees on low salaries, who have a high turn-over as they leave for better-paid jobs. Because many are beyond the age-limit they cannot look forward to a permanent career, and he describes their job as depressing and dangerous and with relatively low prestige. Moreover, effective control depends upon some degree of cooperation by the convicts, and therefore certain offences are overlooked; a compromise is reached whereby guards ignore minor infractions on the understanding that major infractions will not occur.³⁴ In the result coercion of fellow-prisoners, fraud, gambling, homosexuality, sharing of stolen goods, all go

unchecked. An ex-prisoner, Nathan Leopold, points out that a prison wardenship is regarded as a political plum, and he argues that penal administration needs to be up-graded as a professional career carrying enough social prestige and salary to attract good men, both at warden and guard level.³⁵

For long another major problem facing the authorities has been the employment of those in custody. In 1972 a start was made on remodelling Scottish prison industries and new staff were recruited for the purpose. The list of agreed objectives included keeping prisoners occupied, providing training to enable them to obtain suitable jobs after release, allowing them to earn money as a motivation for work, and making economic use of a potential labour force. The Report on Prisons in Scotland for that year reviews the performance over the previous five years, provides statistics of those engaged in various occupations (textile work occupies over 60 per cent of those available for industry, and other types of employment mentioned include woodworking, engineering, farms and gardens, domestic cooking and baking) and claims that the prime objective - to keep inmates occupied - is being met to a satisfactory degree.³⁶ It goes on to say, however, that there is scope for improvement in output and productivity if the tempo is to compare with that of outside industry. It is also stressed that prisons must not seek to gain a competitive advantage over outside manufacturers from the use of cheap labour, that their market share of any product must not be so large as to create undue concern to private industry, and their activities must not unduly worsen unemployment problems. In the past the prison industries have depended too heavily on the custom provided by other government departments, the amount provided by the private sector being negligible, and most of this work has been

unskilled, repetitive and boring, often too little of it available, so that for instance the making and repairing of mail bags has been done by hand while machines stand idle to make the limited orders last out. Ex-prisoners such as Zeno³⁷ and Wildeblood³⁸ have made a point of the utter waste of time and the frustration involved. At one time considerable numbers were employed outside the walls on such useful projects as agriculture, land drainage, forestry and road works, but in recent years this work has dwindled, partly because of opposition from the trade unions and partly through unemployment in some areas.³⁹ At the moment of writing employment prospects do not offer much encouragement for the future. Another serious complaint by prisoners is that the paltry maximum earnings allowed them offer no worthwhile incentive to work.⁴⁰

On the other hand, claims made in official reports for the prison education service are impressive. Education is given under the heads of remedial, academic, cultural, recreational and vocational, and is provided by local education authorities. The programme in Scotland is under the control of two full-time education officers who are assisted by prison officers who undertake teaching duties and also by part-time professional and other staff and guest speakers for evening classes. There are compulsory classes for those inmates under 21, but for others everything is optional. The Report for 1972 stated that many inmates availed themselves of the opportunities offered and the range of interests was wide, ranging from remedial education to studies for the Open University. It claims that there is no doubt that these activities were rehabilitative and that the

programme should be further developed, with in particular the appointment of a greater number of full-time qualified teachers.⁴¹ In various examinations inmates gained passes at 'O' and 'A' level in Art, English, French, Italian and Mathematics and others obtained certificates in such subjects as painting and decorating, home economics, cookery, dress and design and shorthand and typing. It expresses particular satisfaction at the progress made by hitherto non-literate prisoners, many of whom had their first experience of writing letters home and reading their incoming mail themselves. On the vocational side there was increasing interest in Industry Training Board methods, and the planning of an engineering workshop was put in hand at Castle Huntly Borstal, where boys should be able to complete the "off the job" part of an engineering apprenticeship.

The reports on health in prisons highlight certain classes of disorders. Among these are diseases of the respiratory system and of the dysentery type (common colds and sore throats account for more than 70 per cent of the former), which we may assume to be at least contributed to by over-crowding, e.g. in Barlinnie. More significant however are three classes which have probably a common factor - mental disorders, drug dependence and alcoholism, and self-inflicted injuries including attempted suicide, all of which show significant increases over the years 1970-72.⁴² The statistics however make no attempt to correlate the prison figures with those for the population as a whole and it is therefore difficult to draw any definite conclusions from them. It is generally accepted that the incidence

of neurosis and alcoholism is much higher in Scotland than in the rest of the United Kingdom. Cause and effect are difficult to distinguish but it seems reasonable to assume that many admitted to prison are already suffering from mental disorders and the escape mechanisms which follow them (which may indeed be a cause of their committing offences), though the trauma of imprisonment and of prison conditions may aggravate the disorders. It must also be taken into account that growing awareness of psychiatric problems, more sophisticated medical techniques and more effective diagnosis may affect the figures. It is at any rate clear that mental disorders, alcoholism and drug addiction are receiving increasing attention from the prison medical service. Although an English prison report claims that as a result of the National Health Service and changing social conditions prisoners on admission are generally in better health than 20 years ago,⁴³ it is an interesting sidelight that in Scottish prisons the prevalence of pediculosis (lousiness) is on the increase.⁴⁴ The weekly dietary offered to prisoners has greatly improved even since 1948 when there was still a disproportionate amount of "Bread, Marg." and the nightly pint of cocoa would not do much to allay hunger pangs from tea time until next morning.⁴⁵ It is now claimed to be wholesome and adequate and that the "general standard of prison catering now compares favourably with that in hospitals and other institutions".⁴⁶

While we have on the one hand increasing problems in prison administration and to some extent a deterioration in conditions arising from increases in the number of inmates and consequent over-

crowding, shortage of staff, shortage of work, and shortage of funds for necessary expenditure, we must set against these the legislative and other steps taken towards penal reform during this century. In the present study it is possible only to summarise the more important changes.

The Criminal Justice Act 1948 (in its limited application to Scotland) and the Criminal Justice (Scotland) Act 1949 abolished sentences of penal servitude and hard labour, sentences to particular prison divisions and sentences of whipping, prisoners' "ticket of leave", and substituted the term "inmate" for "convict".⁴⁷ The Murder (Abolition of Death Penalty) Act 1965 abolished the death penalty for murder for a trial period of five years, which was subsequently extended on a permanent basis. The Criminal Justice Act 1967 introduced a system of parole for selected prisoners and for young offenders.⁴⁸ By the Children and Young Persons (Scotland) Act 1937 children under eight cannot be punished for crime. A number of statutory provisions regulate the sentencing and treatment of young offenders, most of them codified in this 1937 Act and the Criminal Justice (Scotland) Act 1963, with a subsequent amendment by the Social Work (Scotland) Act 1968, effective from 1971, which reduced from 17 to 16 the minimum age for committal on a sentence of detention in a young offenders institution, with the effect that some offenders who would ~~have~~ previously have gone to approved schools outside the penal system are now committed to prison service institutions. The basis of classification has been radically changed and new types of prisons with diversified functions have

been developed to meet a variety of training needs - open prisons,⁴⁹ Training For Freedom schemes and pre-release courses. As an extension of the courts' powers to modify punishments for common law crimes, they now have under the Summary Jurisdiction (Scotland) Act 1954 wide discretionary powers to mitigate penalties for contravention of statutes, orders and by-laws. They have also been given power to make hospital or guardianship orders for mentally abnormal offenders. Progress has been made in the psychiatric treatment of prisoners, and the after-care and probation services have been reorganised. The suspended sentence was introduced by the Criminal Justice Act 1967.⁵⁰ There are preventive detention and corrective training for the treatment of persistent offenders; these are often considered to be experiments which have failed, "the one aimed at the humane isolation, the other at the reform, of the persistent offender, and each was unsuccessful."⁵¹

We now come to a question increasingly and insistently postulated today - are prisons effective in their declared purpose, do they in fact "work"? What we are discussing here is of course the secondary purpose of imprisonment. There would probably be general agreement that its primary purpose is deterrent - the threat of deprivation of liberty directed towards those who may contemplate committing offences. Its effectiveness in this primary purpose (as regards those who have never been in prison) is of course unquantifiable; even an opinion poll incorporating a direct question such as "Would you have committed crimes if you had not been deterred

by the risk of being sent to prison?" would be unlikely to elicit a substantial percentage of objective answers.

What then is the twentieth-century intention as regards those already in prison? It is officially expressed in the 1972 report on prisons in Scotland thus: "The purposes of training and treatment of convicted prisoners shall be to establish in them the will to lead a good and useful life on discharge, and to fit them to do so."⁵² Is this highly laudable purpose being achieved, or does the existing system work in the direction of the prisoner's deterioration rather than his rehabilitation? The short answer seems to be that in most cases rehabilitation is not achieved, as evidenced by the fact that prison officers agree that over 75 per cent of prisoners are recidivists. And this is hardly surprising in the light of what we have learnt about the calibre of staff and the conditions in which they work, taken in conjunction with the fact that the antiquated buildings which are still in use were designed for a different theory of penology - solitary confinement, treadmill, hard labour etc. - and moreover are now grossly over-crowded and without adequate facilities for work or training.⁵³

For further explanation of the failure of the system we have to look to the opinions expressed by two main groups. The first is composed of those who have studied or experienced prison and its consequences from "the right side" of the bars - prison officers, probation officers, social workers, sociologists, etc. - the second, those who have themselves been convicts.⁵⁴ Neither group

necessarily give entirely reliable versions, the former because of prejudice, incomplete information, an over-developed taste for polemics, and so on, the second because of bitterness and resentment at real or imagined injustices and a desire to get their own back on the system. But both groups are virtually unanimous that the system has largely failed in its purpose.

Though even the more articulate prisoners are not necessarily objective, some of their opinions are worth quoting. A Gorbals man who served a term in Dartmoor and Parkhurst in 1927, when the rule of silence was still in force, has written, "The real punishment begins after a man leaves prison ... the human flotsam spewed out daily from our prisons who drift back into crime as inevitably as night follows day solely, in the vast majority of cases, merely to exist ... You may call our prisons 'institutions' or hotels, or sanatoria, anything you like, but, in terms of reformation, these names mean nothing at all ..."⁵⁵ Wildeblood, already quoted, says, "We are always being told that the purpose of imprisonment is not so much retribution as reform ... it is useless to put a man away for a long period, do nothing to change or improve him, and piously hope that by the time he is released he will have magically transformed himself into a good citizen"⁵⁶ ... Men in prison ... do not merely remain as bad as they were when they came in; by a visible process of moral erosion .. they become worse."⁵⁷ Zeno, also quoted above, speaks of the effect on capacity for decisions, "For nine years I was not able, not permitted, to make a decision of any consequence, and now I have lost the will to decide."⁵⁸ And he talks of having to "attempt to prove to myself that the British penal system has not altered me irrevocably in any way, and that I can still mix easily with my

fellow men".⁵⁹ John McVicar, convicted of robbery with violence, tells how by the age of 21 he "had spent four years in institutions which were meant to correct criminals, yet not one moment of that time had been directed to treating my criminality ... my criminal attitudes and values were being strengthened".⁶⁰

From the prison staff, social reformers and others the story is much the same. As long ago as 1818 Buxton quoted a London jailer as saying that in nine years "he had never known an instance of reformation; he thought the prisoners grew worse".⁶¹ In our own time, "Every prisoner ... becomes so institutionalised that he ceases to be an asset and becomes a burden on society".⁶² A warder says, "They're on about rehabilitation all the time. But it's no use. More crime is planned in prison than outside, for they've nothing else to think about in perhaps ten years". And another says there is "an invisible line between him and the prisoners, so many men don't want help, they are happy the way they are".⁶³ Mr. John Renton, General Secretary of the Scottish Prison Officers' Association, in 1972 confirms this last statement and stresses the functional problems in the way of attempts at rehabilitation - the unacceptable ratio of staff to inmates at about 1:20 or 1:40 in the more crowded prisons, the enormous mental and physical demands on low-calibre recruits and their sense of insecurity in the face of increasing assaults in prison.⁶⁴ The dilemma is not peculiar to Scotland or the U.K., and an American commentator has expressed it thus, "society has chosen to reduce the criminality of the offender by forcing him to associate with more than a thousand other criminals

for years on end, ... the individual prisoner is thrown into prolonged intimacy with other men who in many cases have a long history of violent, aggressive behaviour."⁶⁵

It seems then that there is general agreement that today's prisons fail in their task of rehabilitation and reform, and the incidence of recidivism argues that they do not deter many convicts from further crimes. (We have of course the unknown factor of those whom the prospect of prison has deterred from committing their first crime.) What then do prisons achieve, if anything? Do they punish? Is the loss of liberty a punishment in itself? Most reformers today take the view that not only is the loss of liberty itself a punishment but that it constitutes the main element in punishment. Some, including Mr. John Renton, go further and maintain that the loss of freedom is sufficient punishment and is the utmost which a convicted person ought to suffer.⁶⁶ In this they follow Buxton, who expressed the same opinion a hundred and fifty years ago. It is possibly a somewhat naive opinion, since "The loss of liberty is a considerable punishment for some men but for others, such as the socially inadequate, it is no hardship for it is a protection from the cruel world outside. Thus in reality one man's punishment may be another man's refuge."⁶⁷ And the converse situation may apply; it is arguable that a professional man who values his reputation highly is sufficiently punished by a conviction which deprives him of that reputation, without the added ordeal of imprisonment. There is sometimes a danger in slavish adherence to abstract principles however worthy, such as that of "equality before

the law". To make the punishment fit the crime may be less practical than to make it fit the criminal.

The conclusion that prisons in their present form are failing in their declared purpose automatically raises further questions. Should they be abolished altogether? If not, what alternatives should be introduced for the treatment of certain categories of offenders? What improvements should be made in the treatment of those for whom there is no suitable alternative to custody?

The first question can be disposed of fairly briefly. Only a handful of extremists would seriously suggest that it would be practicable to do without prisons altogether, and it is significant that no large modern state has achieved this ideal.⁶⁸ It is generally accepted that, human nature being what it is, there will always be a hard core of violent or otherwise dangerous criminals who must for the security of society, and sometimes for their own sakes, be kept in detention for longer or shorter periods.⁶⁹ This has become ever more necessary with the progressive abolition of capital punishment for the more serious categories of crimes.

The second question is a much less academic one. Serious efforts are in fact being made to find alternatives to custodial sentences for such offences as prostitution, alcoholism, vagrancy, drug addiction (though not drug-peddling), gambling, homosexuality, psychotic and aberrant crimes, motoring offences and non-payment of fines.⁷⁰ In order to avoid the cost of keeping these offenders

(most of them on short sentences) in prison, and their own loss of earning capacity which involves payment of social security to their families, it is suggested that hostels be set up to house them and that they remain within the community subject to intensive counselling and treatment.⁷¹ The following extract from the Prison Service Journal covers both this question and the preceding one; "there is developing today a new drive to find alternatives to prison, for all but those who need to be banished for their own or others' protection ... we may be entering in this country upon a radically new phase in the history of penal reform ... the cumulative effect of various pressure groups, some highly respected and others less so, making an even more convincing case on economic as well as humanitarian grounds for the development of other ways of dealing with crime and social deviance - less cumbersome, less retributive and more constructive. Prisons remain necessary and can be a positive force for good if rightly used, but as a last resort. The pattern for what is left of the '70s might well be a new range of non-custodial penalties to tackle offending earlier and nearer the source, coupled with a smaller, more professional and specialised, better trained and remunerated Prison Service".⁷²

In this connection the following statistics are of interest as illustrating the types of offences bringing people to prison in Scotland today and the extent to which the pattern has changed since early in the century. It is also interesting to note the differences between the present and earlier centuries especially during the 16th and 17th centuries when "crimes" against religion and morality loomed so large. (See Chapter II). The pattern is not

necessarily representative of the incidence of particular crimes; other factors may distort the picture, such as the ratio between offences and convictions, and the imposition of other penalties such as fines (and in earlier times capital punishment, mutilation, banishment etc.) as alternatives to imprisonment. The figures are for receptions.

<u>Crimes</u>	<u>Men</u>	<u>1913</u>	<u>1938</u>	<u>1971</u>	<u>1972</u>
Crimes of violence		1,257	684	1,133	1,157
Theft		2,823	1,173	3,448	3,174
Housebreaking		585	981	4,071	3,596

Offences

Breach of the peace	11,195	2,728	5,571	5,485
Drunkenness	9,532	2,623	1,286	1,333
Road Traffic Acts Offences	52	285	1,844	1,582

Crimes Women

Crimes of violence	42	29	18	19
Theft	702	145	115	218
Housebreaking	24	17	43	33

Offences

Breach of the peace	4,214	525	283	299	
Drunkenness	5,542	1,109	139	142	
Prostitution	1,270	99	61	85	73

Even in the light of the reservations mentioned above some of these figures give cause for alarm. Even more alarming, in the

context of prison conditions as well as of the incidence of crime, are the following two tables. Both represent average daily numbers in prison. The first is for Scotland alone:-

	<u>Total Population</u>	<u>Total in Prison</u>	<u>Proportion per 100,000</u>
1909-13	4,809,152	2,817	58.3
1928-37	4,914,575	1,698	34.7
1962	5,196,600	3,238	61.9
1971	5,217,400	5,338	101.9
1972	5,210,400	5,220 74	100.0

The second is given by Bromley Davenport, correct to mid-1973, and shows figures on the same basis for West European countries, including Scotland:-

	<u>Total Population</u>	<u>Total in Prison</u>	<u>Proportion per 100,000</u>
Holland	13,119,000	2,540	19.6
France	51,004,000	29,553	59.9
Norway	3,866,468	1,432	37.1
Sweden	8,092,693	4,977	61.4
Denmark	4,800,000	3,350	69.8
W.Germany	61,194,600	51,175	83.6
England & Wales	55,534,000	40,178	72.4
Scotland	5,300,000	5,000	94.3 75

As already indicated it would be unwise to read too much into these statistics without much fuller information as to other factors, though it is difficult to escape certain conclusions as to the criminal propensities of the Scots as compared with people in England and Wales and in other European countries.⁷⁶ But what does emerge in the context of this thesis is that despite a recent slight drop in the prison population (too recent and too slight to be a reliable indicator of the future trend), sheer congestion coupled with staffing problems may well cause the prison administration to break down completely. It follows that any realistic schemes to reduce this population by providing alternatives to imprisonment should be pursued as vigorously as possible.

A Departmental Committee was recently set up under the chairmanship of Lord Dunpark to consider whether the Scottish Courts should be empowered, after conviction, to order the making of restitution by the offender to the victim.⁷⁷ The thinking behind the project would seem to be not merely to compensate the innocent victim but to discourage the potential offender who might be prepared to balance the risk of conviction and a long sentence of imprisonment against the prospect of enjoying his loot when he came out. The Committee may recommend that Scotland should follow recently instituted English procedures, including "criminal bankruptcy",⁷⁷ which would give the criminal courts much more effective powers than are provided by the ordinary rules of civil diligence to identify and attach money and property salted away by the offender.⁷⁸ The significance of this in the context of prison problems is the

possibility of a reduction in the prison population through the commission of fewer crimes in such categories as robbery and burglary, and suspended sentences or shorter sentences in the case of some offenders (there is an understandable tendency for judges to impose longer sentences where the loot has not been recovered, on the principle of postponing the criminal's enjoyment of it for as long as possible, and to the extent that it may become easier to recover it this consideration may be of less relevance). So here we have another possible means of reducing the numbers in prison by crime prevention and by shorter sentences. It should however be pointed out that the English procedures mentioned above have been available for too short a period for their effectiveness to be assessed.

The Howard League for Penal Reform, in a mood of optimism which seems hardly justified in the case of Scotland, claims that Britain's prison population is steadily declining and that the Home Office should now start pulling down the old fortress prisons and replacing them by purpose-built remand centres, observation centres and secure institutions, and that these should not be sited in remote areas which will create difficulties as regards visiting, employment for prisoners and recruitment of staff.⁷⁹ The League also proposes a ceiling of ten years on any sentence except life imprisonment, and a programme of alternatives including adult probation hostels, bail hostels, non-custodial measures, fewer remands in custody before trial.⁸⁰ Here they are attempting to answer our third question (improvements in the treatment of those in custody) at the same time

as the second; and indeed the two questions are really inseparable since what may be euphemistically described as an alternative to custody may in fact differ from it only in the degree of control; the so-called "open prison" is open only in the sense that the prisoner is allowed freedom of movement within defined limits, and should he go beyond these permitted limits he will immediately be sent back to a closed prison; some such sanctions must obviously operate in whatever conditions the offender is controlled. Even the substitution of community service orders and day training centres for prisons with or without bars would need sanctions for those who refused to co-operate.

Dealing now with this third question, the reformers make various suggestions for improving conditions for those who must be kept in custody in the prisons proper. The size of the prisons is criticised on the ground that it makes classification and individual treatment impossible; in this same context it is urged that the numbers of staff be increased and that they be paid higher salaries to attract a better calibre of recruit; also that modern scientific methods of treatment be adopted. Certain punishments should be abolished, in particular solitary confinement, which is sometimes imposed for periods of several months upon very disturbed, aggressive men and which, it is argued, may actually aggravate paranoid conditions and therefore should be replaced by individual psychological treatment or group therapy.⁸¹ Dietary punishments too come under attack, together with the stopping of letters and visits, which punishes not only the offender himself but also his innocent family.⁸² And it is argued that forfeiture of earnings

and the loss of association and of remission can only have a detrimental effect on the prisoner's morale.⁸³ (One might reply that it is one thing to propose treatment in place of punishment for those in need of it, but as regards those who do not need it but are incorrigible trouble-makers we are not told what sanctions for their good behaviour are to be substituted for existing forms of punishment.) It is suggested that prisoners be allowed more visits and more letters, these to be uncensored. Few would quarrel with the complaint that the time awaiting trial is too long, but the remedy is not in the hands of the prison authorities, the trouble arising from under-manned police forces, under-staffed procurators-fiscal and over-long court lists. There is great concern about the problems arising after release; it is felt that there are too few open prisons, part of whose function is to prepare prisoners for release; the real problems for the prisoner start on release, the discharge grant of a few pounds, recently raised, should be increased further, more hostels should be built to provide accommodation, and there should be greatly improved probation and after-care services.

The whole enormous problem facing our penal authorities may be thus expressed. There is always a conflict between the custodial and treatment policies of an institution; that is to protect society from the criminal activities of the prisoner, and to rehabilitate him. The aims may seem incompatible but both are vital.⁸⁴

Conclusion

An analysis of prison conditions through the centuries shows a fluctuation dependent on the prevailing attitudes and problems of the times rather than on any underlying and developing philosophy.

Before the nineteenth century, the general attitude of society and of the authorities was to discard offenders, to regard them as beyond redemption, or to be indifferent to the possibility of redemption; to get them out of sight by execution, banishment, transportation; or by meting out brutal punishments (such as mutilation), which it was hoped would act as an effective deterrent. Alternatively, in certain cases, crimes were regarded not as against society but against the victim, and the offender was allowed to pay his debt by monetary or other compensation (assythment) to the victim or his relations. The function of prison was purely custodial.

With the abolition of heritable jurisdictions and with the gradual development of more civilised and more humane attitudes, the ending of transportation and the growing centralisation of authority, savage physical punishments, particularly for minor offences, or banishment from the parish, or from the country by transportation, became either unacceptable to public opinion or no longer practicable. Capital punishment then became restricted to only the gravest crimes - murder or treason which directly threatened the central authority - and the existence of prison buildings previously used to house French prisoners-of-war, and much more effective than the old insecure jails,

provided a more obvious solution in the shape of custodial sentences. Imprisonment then moved into first place as the major sanction of British criminal law.

Thus, at last, the central authority was forced to take the responsibility for the treatment of all offenders; and this was a novel problem on which it could not draw from accumulated experience.

There has been since the end of transportation a slow but continuing trend towards the mitigation of prison conditions; this trend quickened in the first half of the twentieth century, and has further accelerated in the last fifteen years with an increasing emphasis being placed on the rehabilitation of the offender and on efforts to treat him in the community rather than behind prison walls.

So we come, after a "pattern of 'progress' from the capricious cruelty of the eighteenth century, through the cold barbarity of the nineteenth, to the enlightened policies of the twentieth".¹ But in this century, the tendency has been to forget the victim and the damage done to society, and to concentrate all efforts on ameliorating conditions for the offender and rehabilitating him, with the result that one of the primary or logical purposes of imprisonment, i.e. deterrence, has been apt to become overlooked or at any rate given less than due consideration.

In this "progressive" age, much interest is shown in the aftermath of imprisonment and the problems of recidivism, and the endeavour to rehabilitate offenders in the community is

regarded as supremely important.² But "This attempt to combine the incompatible philosophies of punishment and reformation still divides penologists and confuses the public".³ Public opinion still lags behind reformers' ideas of criminals' "proper treatment" and remains emotional and inconsistent. Despite the uneasy atmosphere in prisons to-day, and the organisations proliferating to improve the conditions of inmates, the general public remains largely unmoved and uninterested, unless some particularly sensational event seizes their attention. It is still true to say that "Society couldn't care less once the man has gone down the steps from the dock".⁴ Meanwhile the incidence of crimes of violence soars, the public is no safer, recidivism increases.⁵

The law defines what is a crime and reflects the values of society as a whole. Our to-morrow's judgement may be different from today's, we may "come to tolerate a certain amount of non-conformity. Already, male homosexual acts between consenting adults are no longer a crime. Nor is attempted suicide."⁶ Abortion is increasingly legalised and censorship is eased. Perhaps quite a lot of people who are criminals today would no longer be regarded as criminals tomorrow".⁷

The present trend towards amelioration of prison conditions may be an over-reaction to the unduly harsh treatment of prisoners in the past. Has it gone too far? A positive conclusion cannot be drawn except that we know 70% to 80% of ex-prisoners are not deterred from offending further. All we

can say is that prison does not seem to have been an effective reformatory influence or a deterrent to those who have already been offenders. We are in the realm of pure speculation when we ask whether, if we were to improve or make harsher prison conditions, recidivism would lessen or increase. It does, however, seem reasonable to hazard a guess that if the process of amelioration were to go too far, recidivism would increase; while if conditions were too severe, the prisoner might become brutalised to the point of being driven to further crime. Somehow a balance must be struck.

"The Law Society in England have produced proposals for reforms in legal punishment; the S.N.P. have a programme of measures for the treatment of criminals and delinquents; the judges' obiter, the bodies, the parliamentarians, the party machines and the man-in-the-street, all make pronouncements on individual aspects, or over the whole field, of criminal punishment. Every man his own penologist. This is an embattled area. There is no cosy consensus ... There is neither consensus nor clear thinking, nor research nor surveys, on which to base firm conclusions".⁸

Notes Chapter I.

1. Christopher Hibbert: The Roots of Evil: A Social History of Crime and Punishment. (Penguin Books 1966) Part 2, ch;3, p.153.
2. Ralph Pugh: Imprisonment in Medieval England (C.U.P. 1970) p.2.
3. W. C. Dickinson: Scotland from the earliest times to 1603. (Nelson 1961) p.59.
4. John Macintosh: The History of Civilization in Scotland. (Edinburgh 1878) Vol.I, p.241.
5. Sir George MacKenzie: The Laws and Customs of Scotland in Matters Criminal. (Edinburgh 1699). p.209, Title XIII.
6. A.P.S. Ass. Dav. C.17, I. 320.
7. A.P.S. Leg. Mal. Mak. C.9, I. 711.
8. Macintosh, op.cit., p.240.
9. The Court Book of the Barony of Urie in Kincardineshire, 1604-1749, edited and introduced by D. G. Barron. (Scottish History Society, Vol. XII). Introduction, p.VI.
Cosmo Innes points out that when the King gave the four points of the Crown to religious houses, "The ecclesiastical judge might not try, at least in the common forms of human justice, cases of life and death. To him, therefore, was given the higher and more mysterious jurisdiction - the direct appeal to heaven by ordeal. The abbots of all our great monasteries had this higher jurisdiction. The Abbot of Scone had a specific grant of the island in the Tay for the trial of accused persons by water, by hot iron, by duel". Lectures on Scotch Legal Antiquities (Edinburgh 1872) p.61.
10. The Court Book of the Barony of Carnwath, 1528-42, edited and with an introduction by W. C. Dickinson. (Scottish History Society 1937). p.XI.
11. Ibid., p.XLIII.
12. Court Book of Urie, op.cit., p.XVII.
13. Ibid.
14. Court Book of Carnwath, op.cit., p.LXXX.

15. Select Pleas in Manorial and other Seignorial Courts, edited for the Selden Society by F. W. Maitland. (London 1889). p.XII.
16. Court Book of Carnwath, op.cit., p.CIII and p.CVIII.
17. Court Book of Urie, op.cit., p.XVI.
18. C. A. Malcolm: Old Scottish Prisons (Scots Magazine, 1932, Vol.17), p.55.
19. W. Mackay Mackenzie: The Medieval Castle in Scotland. (Methven 1927), pp.106-7.
20. Robert Pitcairn: Ancient Criminal Trials in Scotland, Vol.I, Part I, p.52.
21. Robert Chambers: Domestic Annals of Scotland, (Edinburgh 1859). Vol.1, p.52.
22. Court Book of Carnwath, op.cit., p.XXVII.
23. W. C. Dickinson, op.cit., p.95.
24. Diurnal of Remarkable Occurrents that have passed within the country of Scotland since the death of King James the Fourth till the year 1575. (Bannatyne Club 1833). pp.13-14.
25. George Hay: Architecture of Scotland. (Oriental Press 1969). p.72.
26. Extracts from the Records of the Burgh of Edinburgh, 1403-1528, p.39.
27. A.P.S. C.7,II.9.
28. A.P.S. C.6.II.177.
29. The Book of the Old Edinburgh Club. (Edinburgh 1912). Vol.IV, p.76.
30. Malcolm, op.cit., p.50.
31. The Book of the Old Edinburgh Club, op.cit., Vol.IV, p.80.
32. Ibid., p.86. "The iron room" was the room in which prisoners sentenced to death were immured, secured by irons, chains, and shackles.
33. Ibid., p.88.
34. Ibid., "About the middle of the seventeenth century the word 'tolbooth' became synonymous with prison, and prisoners were sentenced to detention in the 'tolbooth' for many years after the Old Tolbooth had disappeared and the Calton Prison had taken its place".

35. A. H. Millar: Haunted Dundee, (Dundee 1923) p.244.
36. George Penny: Traditions of Perth, (Perth 1836) p.10.
 "On the ground floor there was one cell, 12 feet square, arched above. The window was raised about eight feet from the floor, and so thoroughly set with a triple grating that very little light entered the place. The door was composed of thick double oak planks; there was also an outside iron door. This was what was termed the condemned cell or laigh iron house. Here the criminal was fastened to a chain in the floor; his bed a little straw on the damp stones, and a single blanket for a covering". Above stairs were another cell for criminals, a small dark room for debtors and two garret rooms for debtors. Fresh water in a wooden stoup was supplied just twice a week.
37. ^{New} Statistical Account of Scotland, Vol. XV.
 (Perthshire 1845). p.136.
38. David Peacock: Perth: Its Annals and its Archives.
 (Perth 1849), p.598.
39. W. C. Dickinson, op.cit., p.248.
40. James Grant: Old and New Edinburgh, (Cassell, London).
 Vol.I, p.134.
41. John G. Dunbar: The Historic Architecture of Scotland,
 (London 1966), p.200.
42. ^{New} Statistical Account of Scotland, op.cit., p.31.
43. A.P.S. C.20, II. 11.
44. Robert Pitcairn: Ancient Criminal Trials in Scotland,
 (Bannatyne Club 1833), Vol.I, Part I, 1488-1542, pp.16-19.
 Examples of remission, 1493: "permitted to compound for Intercommuning with the English. The Laird of Bucluche became surety" (p.16) "Produced a Remission for art and part of the slaughter of William Auchinlek" (p.18) "for ... treasonable Stouthreif and 'Herschip' ... of XXIIIIJ oxen and cows, and VJ horses and mares" accused got surety (p.17). Accused got a "remission for theftuously wasting of the goods of George Smythe at the time he lay with his wife". (p.19).
 To "come in the King's will" meant to submit to his mercy, so an accused "often escaped the gallows in return for a fine to the exchequer - suited both".
 (The Quarterly Review (London 1831), Vol. XLIV. p.465).
 In 1493, five men "came in the King's will for treasonably concealing and Stouthreif of XXX 'pas-pennys' pertaining to the King". (Pitcairn, p.18).

45. I. F. Grant: Social and Economic Development of Scotland before 1603, (Edinburgh 1930). p.191.

An entry in the R.P.C. for 1605 gives an example of assythment, "William Linlithgow against Hamilton of Stenhaus for payment to him of 1000 lib, as the assythment appointed to him for losse of his luggs". 1st series, Vol. VII. 1604-07.

See a) David Hume: Commentaries on the Law of Scotland respecting Crimes. (Edinburgh 1829), Vol. I, pp.284-5 (Assythment): "This exaction has at all times been part of our custom ... even the Sovereign never pretended to have any power of protecting the criminal in that respect ... it was provided by more than one statute, that no remission should have effect or be allowed in court, unless it proceed ... on evidence of satisfaction made to the kindred, and the sight of sufficient litterae pacis, or letters of slains, obtained from them. These were letters ... bearing receipt of the assythment, granting oblivion of the injury ... and requesting the King to grant him a remission".

See b) McKendrick and Others v. Sinclair, Scots Law Times, March, 1971:-

Lord Grant (p.237) "Where the killer was executed no assythment was due".

Lord Wheatley (p.239) "It was manifestly a creature of the times. Into it was woven the right of private prosecution, generally practised, and the basic principle was that it was the price which the culprit had to pay to the appropriate next-of-kin, if ... the law did not take its full toll. Remission might be granted as a result of the next-of-kin subscribing letters of slains, and in return they acquired the right to compensation in the form of assythment", and accused was pardoned.

Lord Milligan (p.242); "an assythment in its true sense could only be obtained if there had been a criminal act as a result of which the victim was killed".

It seems clear that the state appeared to be more concerned with indemnifying the victim, than in enforcing public order; if a man was rich enough he could slay many men of no substance and the only consequence to him would be the need to pay a fairly nominal sum to the next-of-kin.

46. W. C. Dickinson, op.cit., p.250.
47. Pitcairn, op.cit., p.71.
48. Ibid., p.69.
49. Pugh, op.cit., p.357.
50. Ibid., p.293.
51. Ibid., p.292.
52. Ibid., p.301.

Notes Chapter II

1. An Introductory Survey of the Sources and Literature of Scots Law, (Stair Society, Edinburgh 1936), p.374.
2. Bloody Roll of Perth: B59/1457/2.
Scottish Record Office (West Register House, Edinburgh).
3. David Hume: Commentaries on the Law of Scotland respecting crimes, (Edinburgh 1829), Vol.I, p.2 of Introduction.
4. Spottiswoode Miscellany, (Edinburgh 1845), Vol.II, p.229.
5. Gordon Donaldson: Scotland: James V to James VII, (Edinburgh 1965), p.225.
6. Hugo Arnot: A collection and abridgement of celebrated Criminal Trials in Scotland 1536-1784, (Edinburgh 1785) p.309.
7. Ibid., p.320.
8. Extracts from the Kirk Session Records of Perth, p.54 in The Chronicle of Perth 1210-1668. A Register of Remarkable Occurrences chiefly connected with that city. (Edinburgh, Maitland Club, 1831).
9. Perth Kirk Session Records, op.cit., p.55.
10. Register of the Privy Council of Scotland, series I, Vol.III, p.224.
11. Perth Kirk Session Records, op.cit., p.87.
12. Ibid., pp.79-80.
13. Arnot, op.cit., p.313.
14. Perth Kirk Session Records, op.cit., p.56.
15. Ibid., p.56.
16. Ibid., p.54.
17. Ibid., p.54.
18. Ibid., p.75.
19. Ibid., pp.74, 75.
20. Ibid., pp.84, 85.
21. Ibid., p.68.

22. ^{N₆₃} Statistical Account of Scotland, 1845. Vol.XV.
(Perthshire) p.35, quotes Perth Kirk Session Records,
July 1585.
23. Spottiswoode Miscellany II, p.256.
26. Hume, op.cit., Vol.I, p.588.
27. A.P.S. C.9 II. 539.
The witches' mark was "discovered amongst us by a
Pricker, whose trade it is, and who learns it as other
trades, but this is a horrid cheat", Sir George
Mackenzie: The Law and Customs of Scotland in Matters
Criminal, (Edinburgh 1699), p.48.
28. Perth Kirk Session Records, op.cit., p.54.
29. Ibid., p.64.
30. Ibid., p.89.
31. Arnot, op.cit., p.358.
32. Robert Chambers: Domestic Annals of Scotland, Vol.II,
(Edinburgh 1859, 2nd edition), p.279.
33. The Register of the Privy Council of Scotland, 3rd series,
Vol.II, p.252.
34. Chambers, op.cit., Vol.II, p.414.
35. Scots Peerage, Vol.VI, p.363.
Arnot, op.cit., under "Parricide, p.129: "At this period,
and long after, the sentences of the Court of Justiciary
frequently express no time for these being carried into
execution; it being customary to take the convict
directly from the court to the scaffold".
36. R.P.C., 1st series, Vol.III, p.662.
37. Chambers, op.cit., Vol.II, p.496.
38. "I have a letter from my Lord the Duke of Athole,
desiring I might wryte to you hoping to allow the
hangman of your town to go to Logyrate and execute the
two thieves, condemned and lying prisoners there, and
that you will deliver him to Alexander Mitchell, his
Grace's Chamberlain here who will bait him and send
some men with him to guard him up the country. I
doubt not but you ... will comply with this".
(B59)1774 West Register House).
39. R.P.C., 1st series, Vol.III, p.40.

40. Ibid., p.361.
41. Ibid., Vol.X 1613-16, p.173.
42. Ibid., Vol.XII 1619-22, p.13.
43. "In March 1684 was given to James Campbell ... supplicant who h^es been prisoner in Perth these nine years by-gone - 56 shillings". An Old Session Book: being studies in Alyth's 2nd Session Book, by James Meikle. Minutes of the Session, 1669-88, p.166.
44. Neville Payne, an English Catholic, because of suspected complicity in a plot to restore James VII, in 1690 was tortured severely in Edinburgh, and kept in the various state prisons of Scotland for ten years. Chambers, op.cit., Vol.III, pp.40-41.
45. William Ferguson: Scotland 1689 to the Present. (Edinburgh, 1968), pp.164.
46. Register of the Privy Council, 1st series, Vol.X, p.268.
47. Donaldson, op.cit., p.233.
48. Chambers, op.cit., Vol.II, p.295.
49. Ibid., p.295.
50. Ibid., pp.311, 312.
51. The Book of the Old Edinburgh Club, (Edinburgh 1911), Vol.IV, p.111.
52. Ibid., pp.106-7.
53. Ibid., p.111.
54. R.P.C., 3rd series, Vol.II, 1665-69, pp.128-9.
55. Transactions of the Literary and Antiquarian Society of Perth, (Perth 1827), Vol.I, no page number given.
56. R.P.C., 1st series, Vol.XII, 1619-22, p.431.
57. Chambers, op.cit., Vol.III, p.80.
58. R.P.C., 1st series, Vol.VI, 1599-1604, p.237.
59. R.P.C., 2nd series, Vol.I, 1625-27, p.218.
60. Ibid., Vol.II, 1627-28, p.621.
61. A.P.S., C.12, III. 139, 140, 142.

62. R.P.C., 1st series, Vol.IX, 1610-13, p.223.
63. Ibid., Vol.X, 1613-16, p.4.
64. Ibid., Vol.X, p.287.
65. The Book of the Old Edinburgh Club, op.cit., p.99.
 Note that legacies were made for the relief of poor prisoners: "Item the soume of ane hundreth merks ... to the distressit prisoners in the Tolbuith of Edinburgh". June 23rd 1637. Extracts from the Records of the Burgh of Edinburgh, 1626-41, p.190 (Edited by M. Wood, Edinburgh 1936).
 More legacies for the benefit of those in the Tolbooth whose debts should "not exceed 100 li Scots", May 7th 1640. Burgh Records, p.239.
66. R.P.C., 1st series, Vol.IV, p.302.
67. Ibid., p.303.
68. A.P.S., C.44, IV. 141.
69. R.P.C., 1st series, Vol. II, 1569-78, p.195.
70. R.P.C. 1st series, Vol.III, 1578-85, p.129.
71. The Book of the Old Edinburgh Club, op.cit., p.104.
72. C. A. Malcolm: Old Scottish Prisons, Scots Magazine 1932, Vol.17, p.51.
73. R.P.C., 1st series, Vol.IV, p.550.
 "At night the Canongate Tolbooth was locked and the officials departed to sleep in their own homes, leaving those entrusted to their care to be watched by themselves, and Providence, until the next morning". Book of the Old Edinburgh Club, op.cit., p.103.
74. William Mackay: Prison life in Inverness 1700-1720, in Transactions of the Inverness Scientific Society and Field Club 1883-88, Vol.III, pp.98-100.
75. Ibid.
76. Ibid., p.101.
77. Pitcairn: Ancient Criminal Trials in Scotland, Vol.III 1609-24, p.219. In February 1612, "heiring that Jock Ellate was hingand in the steppill, came ... into the steppill, quhair he saw the defunct hingand in his awin belt". Pitcairn comments, "The accommodation for prisons (in England as well as Scotland) was at this period of the most wretched description. Steeples

were often fitted up with fetters in the square or lower parts, riveted into the wall, where these luckless victims were detained until Trial, without any Jail allowance. In cases of Witchcraft, etc., iron collars were added; and it is highly probable that cases of suicide were by no means infrequent, owing to the desperate circumstances of these miserable creatures".

78. Chambers, op.cit., Vol.II, p.442.
79. Ibid., Vol.III, p.20.
80. Ibid., Vol.III, p.15.
81. J. G. Dunbar: The Historic Architecture of Scotland, (London 1966), p.200.
82. Ibid., pp.201, 202.
83. Chambers' Journal, Vol. 8, Dec.1904 - Nov.1905.
"An island Prison in the Forth" (May 20th 1905) p.387.
84. Ian B. Cowan: The Scottish Covenanters 1660-88 (London 1976), pp.87, 88.
85. Chambers' Journal, op.cit., p.386.
86. A London Broadside of 1694 being "A true and Faithful Relation of the Particulars of the surrender of the Island of the Bass in Scotland, together with the Articles of Surrender". On April the 20th 1694. (Printed for R. Allen at the George in Fleet Street 1694).
87. R.P.C., 1st series, Vol.III, p.132.
88. Ibid., p.725.
89. Cowan, op.cit., p.107.
90. Ibid., p.89.
91. Donaldson, op.cit., p.373.
92. Cowan, op.cit., p.69.
93. Ibid., p.72.
94. Ibid., p.92.
95. Ibid., p.100.
96. Ibid., pp.101, 102.

97. Ibid., p.123.
98. Chambers, op.cit., Vol.II, p.480.
99. Cowan, op.cit., p.124.
100. Chambers, op.cit., Vol.III, p.11.
101. Ibid.
102. Ibid., Vol.III, p.45.
103. Ibid., p.82.
104. The Court Book of Balnakeilly 1699-1745.
Some records of the Baron Court held at Mouline, under Baron Baillie, Clerk of Court and Procurator Fiscal, in the possession of Mrs. Stewart Stevens of Balnakeilly, Pitlochry.
105. To deal effectively with them Fletcher of Saltoun advocated compulsory servitude, an extension of the serfdom endured by those men, women and children who worked the coal and salt mines and were called "blackfolk".
106. W. C. Dickinson and G. Donaldson: A Source Book of Scottish History, (Edinburgh 1954), Vol.III, p.359.
107. Edward Burt: Letters from a Gentleman in the North of Scotland, 1726 (London 1818), Vol.II, p.252.
108. Ibid., Vol.I, pp.48, 49.
109. Chambers, op.cit., Vol.III, p.411.
110. Court Book of Balnakeilly, op.cit.
111. James Grant: Old and New Edinburgh, Vol. III, p.240
112. The Prisoners of the '45, edited from the State Papers by Sir Bruce Gordon Seton and Jean Gordon Arnot (Scottish History Society, Edinburgh 1928). Vol.I, 3rd series, p.65.
113. Ibid., p.66.
114. Ibid., p.166.
115. Ibid., p.67.
116. Ibid., p.70.
117. Ibid., p.71.
118. Ibid., p.72.

119. Ibid., p.73.
120. James Grant: Old and New Edinburgh, Vol.I, pp.69, 70.
121. The Prisoners of the '45, p.73.
122. Ibid., pp.73, 74.
123. Ibid., p. 157.
124. Ibid., p. 158.
125. Ibid., p. 158.
126. Ibid., p. 170.
127. Ibid., p. 174.
128. Ibid., p. 177.
129. Ibid., p. 185
130. Ibid., p. 180.
131. Ibid., p. 24.
132. Gordon Donaldson: Scotland: The Shaping of a Nation, (David and Charles, 1975), p.81.

Notes. Chapter III. Part I.

1. Christopher Hibbert: The Roots of Evil, (Penguin Books Ltd., 1966), p.158.
2. Ibid., p.158.
3. Samuel Romilly (1757-1818) neither philosopher nor prison visitor, fought against the savagery of the English law. Despite years of effort in which his friend Dugald Stewart encouraged him from Edinburgh, he succeeded only in pushing through Parliament Acts abolishing the death penalty for stealing more than 1s. from the pocket, and for taking 5s worth of goods from bleaching greens. He attacked the House of Lords (which included seven bishops) for holding that: "Transportation for life is not sufficiently severe punishment for the offence of pilfering what is of 5s. value, and that nothing but the blood of the offender can afford an adequate atonement ..." Patrick Medd: Romilly (Collins 1968), p.233.
4. In L'Esprit des Lois, 1748.
5. In Crimes and Punishments, 1764.
6. In Commentary.
7. Howard "well knew, from manifold observation, that human nature could not endure, for a long time, confinement in perfect solitude, without sinking under the burden... he never thought of its being made the sentence of offenders during the whole term of their imprisonment; such being not only extreme and scarcely justifiable severity, but inconsistent with the design of reclaiming them to habits of industry by hard labour". John Aiken, M.D.: A View of the character and public services of the late John Howard (London 1792) pp.171, 172.
8. Instead of relying, as many of them did, on the customs of "garnish" or "chummage" and payment for "easement" of irons. The cruel custom of jailers demanding garnish of newcomers, "Pay or strip", was too often the rule in English prisons, and new arrivals sometimes died of cold.
9. Howard, on a visit to Scotland, discussed with Edinburgh's Lord Provost his plans for prison reform, and persuaded him to institute a competition for a plan for prison building. Several entries incorporated most of Howard's ideas --- solitary cells at night and work in association, airing grounds, classification. Adam produced a plan after studying Bentham's Panopticon. Bentham's plan had been a full circle with the keeper actually living

in the watch tower. But Adam realised that if there were to be enough light in the centre tower to make it habitable, there would be enough light for the prisoner to see in. So he devised the prison (and the tower) as a semi-circle with the keeper's house behind the tower, and won the competition. The Bridewell which was eventually built was a compromise --- work cells formed the immediate semi-circle nearest the keeper's tower, with separate cells for night behind these. Adam's plan had not allowed for separate confinement. Bentham himself disapproved of it. The fact that the Edinburgh Bridewell was the closest approximation to Bentham's theory ever built has never been adequately recognised. Lecture on Scottish Prisons and Hanoverian Forts in the 18th Century to Scottish Georgian Society by Ian McIver of Department of Environment and National Monuments, March 1972.

10. Alexander Wedderburn: Observations on the State of Prisons (1794) p.24.
11. J. J. Gurney, writing in 1818, says: "Howard, indeed, drew much of the public attention to our prisons, which before his time were generally the sinks of extreme misery and terrible disease. But his efforts, and the efforts which he excited in others, were directed more to the alleviation of distress than to the diminution of crime; more to the maintenance of the prisoner's health than to the reformation of his morals". Notes on a Visit made to some of the Prisons in Scotland and the North of England in company with Elizabeth Fry (London 1819) p.98. But Howard "extremely lamented that the plan of reformation seemed, of all parts of his system of improvement, least entered into or understood in this country ... Merely to get rid of convicts by execution or perpetual banishment, he regarded as a piece of barbarous policy, equally denoting want of feeling, and deficiency of resource". Aiken, op.cit., pp.81, 82.
12. Janet Whitney: Elizabeth Fry (Guild Books, 1947) p.155.
13. Ibid., p.177.
14. J. J. Gurney: A brief Memoir of Elizabeth Fry in Vol. Law of Kindness by Rev. G. W. Montgomery, p.242.
15. Hibbert, op.cit., p.176.
16. Thomas Fowell Buxton: An Inquiry whether Crime and Misery are produced or prevented by our present system of prison discipline, (Edinburgh 1818) p.5 of Preface. Buxton was an M.P., the Quaker brother-in-law of Mrs. Fry, and a member of the New Society for the Improvement of Prison Discipline.

Notes. Chapter III. Part II.

1. Memoir of the Life of Elizabeth Fry, edited by two of her daughters, K. Fry and R. Cresswell. (London 1848, 2nd edition), Vol.II, p.79.
2. Works of the Rev. Sidney Smith (London 1840), 2nd edition, Vol. I, p.462.
3. Ibid., pp.442, 443 and 462.
4. J. G. Lockhart: Life of Sir Walter Scott 1771-1832. (London 1896), Scott's Journal entry, Feb. 20th 1828, p. 680.
5. John Howard: State of the Prisons in England and Wales with an account of some foreign prisons 1777/1780 and 1784. (Everyman edition 1929).
6. Ibid., p.149.
7. Ibid.
8. Ibid., p.148.
9. John Aiken, M.D.: A View of the character and public services of the late John Howard. (London 1792), p.123.
10. Ibid., pp.160-161.
11. Howard, op.cit., p.148.
12. Ibid., p.147.
13. Christopher Hibbert: The Roots of Evil, A Social History of Crime and Punishment. (Penguin 1966), p.154. See also p.vi *
14. Howard, op.cit., p.2.
15. Hibbert, op.cit., p.154.
16. Howard, op.cit., p.148.
17. David Hume: Commentaries on the Law of Scotland respecting Crimes. (Edinburgh 1849), Vol. I, p.10.
18. Howard, op.cit., p.6.
19. Hume, op.cit., p.11.
20. Howard, op.cit., pp.148, 149.
21. Ibid., p.17.

22. Ibid., p.147.
23. Ibid., p.148.
24. James Neild: State of the Prisons in England, Scotland and Wales, 1812, p.2.
See also p.617 where Neild declares himself to be, "Animated with the hope of giving permanency and improvement to that reform in our Prisons which was so ably begun by my excellent Predecessor, Mr. Howard".
25. J. J. Gurney: Notes on a visit made to some of the Prisons in Scotland and Northern England (London 1819), p.105.
See also Rev. Thomas Timpson: Memoirs of Mrs. Elizabeth Fry (London 1847), pp.87, 88. "Though prisons were not so numerous in that country as in England, Mrs. Fry found many, and those in a very deplorable condition".
26. Gurney, op.cit., pp.19, 35. Neild, op.cit., pp.3, 11, 21, 24.
27. Sir Walter Scott: The Heart of Midlothian, (London 1893), p.8.
28. Ibid., notes p.544.
29. Henry Cockburn: Memorials of his Time, (Edinburgh 1909), p.229.
30. Ibid., p.228.
31. William Chambers: Memoir of W. & R. Chambers, (13th Edition, Edinburgh 1893), p.99.
32. Ibid., p.100.
33. Gurney, op.cit., p.39.
34. Ibid., p.42.
35. Neild, op.cit., p.238.
36. Ibid., p.239.
37. Neild, op.cit., p.22; and for other examples see Neild pp.3, 176, 193 and Gurney, op.cit., pp.19, 25.
38. Gurney, op.cit., p.46.
39. Neild, op.cit., p.254.
40. Gurney, op.cit., p.24.

41. Ibid., p.25.
42. Ibid., pp.25, 26.
43. Ibid., p.111.
44. Robert Southey: Letters from England, 1807.
(Edited by J. Simmons, Cresset Press, London 1951),
p.218.
45. Neild, op.cit., pp.187, 200, 238, 242, 1.
46. Gurney, op.cit., pp.52-3.
47. Letters from Professor Garscombe of New York:
The Contrast: or Scotland as it was in the year 1745,
and Scotland in the year 1819, (London 1825), p.299.
Garscombe says of Calton Bridewell, "It is too cheerful
for the purpose of salutary discipline and penitentiary
confinement. Each prisoner is provided with a straw
matress, a pillow, a clean sheet and two double blankets;
their food is wholesome and good. In short there are
too much comfortable living and hilarity in this prison,
to answer the main purpose of deterring the poor and
vicious from the commission of crime". p.241.

At Glasgow Bridewell, Garscombe found the "chief
employment of the prisoners, male and female is spinning
linen yarn, weaving, tambouring ... cutting corks,
clipping muslin ... and picking oakum". (p.299).
48. Gurney, op.cit., p.47.
49. Ibid., p.34.
50. Southey, op.cit., p.208.
51. Memoir of the life of Elizabeth Fry, op.cit.,
Vol.I, p.255.
52. Neild, op.cit., p.189.
53. Ibid., p.399.
54. Gurney, op.cit., pp.43, 44.
55. Ibid., p.51.

See also Timpson, op.cit., p.98. Although "Scotland
needed far less the example of Mrs. Fry and her devoted
colleagues in seeking the reformation of female
prisoners", yet, "She found our prison very badly
managed; the women crowding by night, four or five
into one cell, without any work, without a matron, no
chaplain and locked up by the common turnkey. Mrs.

Fry has left a letter for the Magistrates containing observations which I hope will be attended to". Letter from a Scotch lady who was with Mrs. Fry in Glasgow, quoted by Timpson, pp.87, 88. As a result of Mrs. Fry's visits to Scottish prisons, Ladies' Visiting Committees were started and later shelters for liberated prisoners appeared in Edinburgh, Glasgow, Perth and Greenock. p. 100.

56. Neild, op.cit., p.475.
57. ^{New} Statistical Account of Scotland 1845. Vol.XV, p.135.
58. Ibid., p.135. "Occasionally they enact what they call a 'Hell scene'". In the day-room "amidst shouts and yells ... and uttering revolting exclamations, they pull the fire to pieces, and fling the live coals round in every direction; others, at the same time, dashing water about, and in every way creating uproar and confusion".
59. Ibid., pp.136, 137.
60. Neild, op.cit., p.201.
61. Gurney, op.cit., p.46.
62. Neild, op.cit., p.201.
63. Ibid., p.243.
64. Ibid., p.202.
65. Ibid., p.239.
66. Ibid., pp.238, 239.
67. Ibid., p.253.
68. Ibid., p.300.
69. Ibid., p.189.
70. Ibid., p.501.
71. Ibid., p.240.
72. Ibid., p.25.
73. Ibid., p.198.
74. Ibid., p.190.
75. Ibid., pp.198, 199.

76. Act of Council of Lord Provost and Magistrates and Council of Edinburgh, 5th September 1810, quoted by Neild op.cit., p.190.
77. Neild, op.cit., p.190.
78. Ibid., pp.238, 239.
79. Ibid., p.174.
80. Ibid., p.239.
81. Ibid., p.241.
82. Bell's Principles of the Law of Scotland, 5th Edition (1860) Sect. 2315.
83. Erskine: Institutes, Book IV, Title III, S.26; quoted by Neild, op.cit., p.194.
84. See generally: William Bell: Dictionary and Digest of the Law of Scotland, 1st edition (1838) under title Cessio Bonorum.
85. Neild, op.cit., p.196.
86. Ibid., p.188.
87. William Bell, op.cit., under title Sanctuary.
88. Bell's Principles, Sect. 2316.
 - 1) W. C. Chambers, writing about 1814 says that the "Sanctuary of Holyrood" was seldom without distinguished characters from England ... some of them gaunt, oldish gentlemen, seemingly broken down men of fashion, wearing big old spectacles, who now drew out existence here in defiance of creditors".
W. C. Chambers: Memoir of W. & R. Chambers (Edinburgh 1893), p.97.
 - 2) Bayley v. Swan, Court of Session Cases, 1835-36, p.619.
Paget Bayley, while resident within the Sanctuary of Holyrood-house, contracted a debt of £2.10 to Swan, grocer in the Canongate. Bayley was incarcerated in the Abbey Jail by Swan, under an Act of warding, granted by the bailie of the Abbey. After 12 months, Bayley presented a petition, stating that because a prisoner in the Abbey Jail could not pursue a cessio, he must remain in prison perpetually unless he could be transferred to the Canongate Jail, being the common jail of the district where he could get the benefit of the cessio. The court refused on the grounds that they had no authority to move him, and that to do so would be to prejudice Swan by putting Bayley on equal terms with all his creditors.

Lord Mackenzie, "(Swan) has obtained what may be termed a lawful monopoly of incarceration".

Lord Gillies. "In refusing this petition I cannot refrain from observing that I believe the unfortunate debtors who inhabit the sanctuary obtain such credit from grocers and shop keepers as is essential for their support on the very strength of their being liable to compulsitor of imprisonment in the jail of the Abbey, beyond the reach of the process of cessio. But for its being known that this compulsitor existed, these debtors would probably obtain no credit at all; and nothing could be more cruel to them in reality, however humane it might be in appearance, than to grant the prayer of this petition. The result would probably be that they would never receive credit again, in any case".

89. Neild, op.cit., p.199.
90. Ibid.
91. Act of Session, 14th June, 1771, quoted in Erskine's Principles, 21st Edition, pp.703, 704.
- * 13. See Dickens: The Pickwick Papers. (Nelson 1912), p.628, "the just and wholesome law which declares that the sturdy felon shall be fed and clothed, and that the penniless debtor shall be left to die of starvation and nakedness".
92. Neild, op.cit., p.523.
93. Ibid., p.405.
94. Gurney, op.cit., pp.107-8.
95. Ibid., pp.21-2.
96. Edinburgh: a satirical novel by the author of London, or a month at Steven's, (London 1820), Vol.III, p.45.
97. Neild, op.cit., p.474.
98. Gurney, op.cit., pp.109, 110.
99. Ibid., p.22.
100. Ibid., pp.19, 20.
101. Ibid., p.109.
102. Ibid., pp.39, 40.
103. Neild, op.cit., pp.401, 402.
104. Gurney, op.cit., p.39.

105. Neild, op.cit., p.21.
106. Gurney, op.cit., p.53.
107. Ibid., p.75.
108. Neild, op.cit., p.188.
109. Ibid., p.201.
110. The Contrast, op.cit., pp.297, 299.
111. H. H. Millar: Haunted Dundee (Dundee 1923), p.247.
112. Ibid., p.249.
113. H.M. Prison & Borstal Institution at Greenock. S.H.D. File No. P.12293/1.
114. John G. Dunbar: The Historic Architecture of Scotland (London 1966), p.202.
115. Ibid., p.207.

Notes. Chapter IV.

1. Francis Abell: Prisoners of War in Britain, 1756-1815 (London 1914), pp.449-450.
2. Sir Walter Scott: Waverley (Dryburgh Edition, Edinburgh 1892), pp.249-250.
3. Abell, op.cit., p.117.
4. Ibid., p.118.
5. George Penny: Traditions of Perth (Perth 1836), p.91.
6. Ibid., p.91.
7. William Sievwright: Historical Sketch of the Old Depot or Prison for French Prisoners-of-War at Perth (Perth 1894), p.4.
8. Perth Courier, Thursday, July 9th, 1812.
9. Penny, op.cit., p.92.
10. Sievwright, op.cit., p.28.
11. Ibid., p.35.
12. Abell, op.cit., p.197.
13. Ibid., pp.197, 198.
14. Ibid., pp.201, 202.
15. Quoted by Abell, op.cit., p.270.
16. Abell, op.cit., p.271.
17. James Grant: Old and New Edinburgh, Vol.I, p.71.
18. Louis Garneray: The French Prisoner. Translated by Lawrence Wood, (London 1957), p.175.
19. The Letters of Sir Walter Scott 1811-14. Edited by H. J. C. Grierson, (London 1932), p.111. Scott's letter to Lady Abercorn, 3rd May, 1812. See also Scott's Journal for 30th April, 1814, referring to Napoleon's exile to Elba, "The feeling of the French officers, of whom we have many in our vicinity, is very curious, and yet natural. Many of them, companions of Buonaparte's victories, and who hitherto have marched with him from conquest to conquest, disbelieve the change entirely". Life of Sir Walter Scott 1771-1832 by J. G. Lockhart, (London 1896). Journal entry p.253.

20. Abell, op.cit., pp.3, 4.
21. D. L. Howard: John Howard, Prison Reformer (London 1958), p.78.
Howard himself had been a prisoner in French hands in 1756, when the ship on which he was sailing to Portugal was captured. He observed, (at Brest), "how cruelly my countrymen were used there". He spent two months in France, on parole, and "I had sufficient evidence of their" (British prisoners-of-war in various French towns), "being treated with such barbarity, that many hundreds had perished". John Howard: The State of the Prisons (Everyman edition 1929), p.9.
22. Ibid., p.81.
23. Ibid., p.82.
24. Locks, Bolts and Bars. Stories of Prisoners in the French Wars 1759-1814. Collected by Mrs. Oliver Elton. (London 1945). Foreward p.8.
25. Abell, op.cit., p.8.
26. Elton, op.cit., p.10, 17.
27. Garneray, op.cit., pp.16, 17.
28. John Howard, op.cit., p.144.
29. Abell, op.cit., p.14.
30. Ibid., pp.14, 15.
31. Garneray, op.cit., p.8.
32. Elton, op.cit., p.11.
33. Letters in United Services Museum, Edinburgh Castle. S.U.S.M. documents French Forces 808.1. These letters are copies, originals unknown. As well as supplying food "14 days provisions for 200 prisoners," Miller also lists "coals 10/-, cooking 9/-, carriages 48/-, attendance 20/-". Clearly a contractor's business was a paying one, so, understandably Miller, in a letter, October 1813, to the Transport Office shows concern at the rumour that "it is contemplated to remove Prisoners of War" from the Castle. As he has "laid in some provisions and made other arrangements - their immediate removal would be attended with loss and inconvenience to me". He asks anxiously for assurance that the Transport Office will "be pleased to allow them to remain". A brief reply told him "it is not intended to remove the Prisoners from Edinburgh Castle

at present". We have no means of knowing whether Miller was dishonest or not. Certainly Howard "could have wished that the gentlemen concerned for the American prisoners had extended their regards also to the French, and by their attention and visits had obliged the contractors to be more careful in discharging their duty". The State of the Prisons, op.cit., p.143.

34. George Borrow: Lavengro, in 3 vols. (London 1926). Vol. I, p.23.
35. Abell, pp.16, 17.
36. Quoted by Abell, op.cit., p.18.
37. Elton, op.cit., p.18. From a 1779 play performed in Theatre Royal, Covent Garden.
38. Garneray, op.cit., p.10.
39. 7 Will.IV and 1 Vict. C.84.
40. Garneray, op.cit., p.11.
41. At a sale at Sotheby's, Nov. 5th 1976, many models by French prisoners in the Napoleonic Wars were included, the finest being a miniature box-wood model of a French 80-gun two decker on a straw work stand. It made £3,400. A prisoner-of-war model of a 48-gun frigate made £4,600. Times 6/11/76.
At Glamis Castle, Angus, can be seen a patch-work quilt worked by French prisoners at Perth and now adorning the Queen Mother's bed.
42. Penny, op.cit., p.93.
43. Elton, op.cit., p.11.
See too, Garneray, op.cit., p.55. Louis Garneray, captured from a French ship, and imprisoned in Britain for 10 years until 1814, much of that time spent in the hulks, painted portraits and became a commercial success. "For every portrait I got 6d to a 1/- and as I did 3 or 4 every day I began to lay by enough capital to get proper brushes, oil colours and canvas. Now life was really enjoyable. Every day I thought less of freedom".
44. John Howard, op.cit., p.145, "They lay on straw on the floor, and their straw had not been changed for six or seven weeks".
45. Abell, op.cit., p.254.
46. The Yarn of a Yankee Privateer, edited by Nathaniel Hawthorne. Introduction by Clifford Smyth (Funk and Wagnalls Company, New York and London, 1926). Identity of author, who fought in the War of 1812, is unknown.

47. Ibid., p.167.
48. Ibid., p.173.
49. Ibid., p.219.
50. Ibid., p.230.
51. R. L. Stevenson: St. Ives, (Tusitala Edition, London 1924), p.4.
52. Abell, op.cit., p.254.
53. Quoted by Abell, op.cit., p.258.
54. Ibid., p.91.
55. R. L. Stevenson, op.cit., p.5, "the prison was daily visited at certain hours by a concourse of people".
56. Abell, op.cit., pp.203, 204.
57. Elton, op.cit., p.11.
"There was another class who gambled away everything, even the clothes from their bodies; and some of them were to be seen wandering about with a bit of blanket round them, without any other covering".
(Penny, op.cit., p.93).
58. Penny, op.cit., p.94.
59. Abell, p.288.
60. William Chambers: Memoir of William and Robert Chambers (Edinburgh 1893), pp.68, 69.
61. Elton, op.cit., p.255.
62. Henrietta Keddie (Sarah Tytler): The Story of a Middle-Class Scottish Family . (London 1911), pp.36, 37.
63. Rutherford's Southern Counties Register and Directory of 1866, extracts enclosed in letter from J. Rutherford to Sir G. Douglas. United Services Museum, S.U.S.M. documents, French Forces 814.1.
64. Ibid.
65. Ibid.
66. Fullarton's Imperial Gazetteer of Scotland, quoted in "printed" information enclosed in letter referred to in Note 63.
67. Abell, op.cit., p.340.

68. Ibid., p.340.
69. Chambers, op.cit., pp.62, 63.
70. Ibid., p.67.
71. Ibid., 71.
72. Grant, op.cit., Vol.I, p.248.
73. Ibid., p.71.
74. R. L. Stevenson, op.cit., p.47.
75. Sievwright, op.cit., p.48.
76. Garneray, p.174.
77. Previously the punishment had been the pillory and two years imprisonment. In France a decree condemned "to the galleys all who should be retaken". (Elton, op. cit. p.71). "The sum placed by the French Government on the head of an escaped prisoner was £2.1.8. The penalty for favouring escape was a fine of £12.10.0 per head, legal expenses, and two months imprisonment". The 1812 Act for the more effectual punishment of persons aiding Prisoners of War to escape from His Majesty's Dominions stated that "Whereas many prisoners of war confined and on parole in different parts of his Majesty's dominions have of late escaped by the aid and assistance of many of his Majesty's subjects and others", it was enacted that any who should aid escapes in the future would be liable to be transported as a felon for life, or for a term of fourteen or seven years. 52. Geo.III. C.156.
78. Abell, op.cit., p.377.
79. Ibid., pp.308, 309 and 325.
80. Chambers, op.cit., pp.71, 72.
81. Sievwright, op.cit., pp.46, 47. The Depot was "fully occupied for almost two years only, all the inmates being sent home after Bonaparte's first discomfiture when he was exiled to Elba, there being no occasion for it during the brief final struggle which terminated with Waterloo in 1815". (Siewwright, p.3). "The prison has since been either empty, or let for granaries ... but it might be far better occupied as a national bridewell - where convicted felons, instead of being sent out of the country at so great an expence, could be employed in labour to maintain themselves". (Penny, op.cit., p.94).
82. Abell, op.cit., p.277.

Notes. Chapter V. 1835-77

Introduction

1. P. J. Fitzgerald: Criminal Law and Punishment, (Oxford 1962), p.208.
2. Latter Day Pamphlets, edited by Thomas Carlyle, Model Prisons 1850, (London 1872), p.50.
3. Ibid., p.49.
5. Ibid., p.45.
- 6.& 7. Ibid., p.47.
8. Ibid., p.52.
9. Ibid., p.53.
10. Ibid., p.57.
11. Hugh Miller: Essays, Historical & Biographical, The Felons of the Country. (Edinburgh 1875), p.269.
12. Ibid., p.271.

Part I.

1. 5 & 6. Will.IV. C.38.
2. Henry Mayhew: London's Underworld. Selections from Vol. IV of London Labour and the London Poor (London 1966), p.26 of Introduction by Peter Quennell.
3. Quennell, op.cit., p.26.
4. Christopher Hibbert: The Roots of Evil (Penguin 1966), p.184.
5. Ibid., pp.181, 182.
6. Ibid., p.182.
7. Ibid., p.183.
8. Ibid., p.183.
9. "so that the discipline pursued at the prison" (Pentonville) "yields upwards of ten times more lunatics than should be the case according to the normal rate". Henry Mayhew and John Binney: The Criminal Prisons of London and scenes of Prison Life, p.104. (London 1862).
10. Memoir of William Ellery Channing, vol.III, pp.26, 27. (London 1848) Edited by W. J. C. (his nephew).

11. Ibid., p.27.
12. Ibid., p.27.
13. Dickens: American Notes, pp.107, 108 (Nelson 1912).
14. Ibid., p.109.
15. Ibid., p.109.
16. Ibid., p.115.
17. Ibid., p.117.
18. Ibid., p.118.
19. Ibid., p.119.

Dickens did not however, approve of pampering prisoners. When describing a visit to incorrigibles awaiting transportation in solitary confinement at Millbank penitentiary, he says, "there was a striking contrast between these plentiful repasts of choice quality, and the dinners ... of ... the great bulk of the honest working community - of whom not one man in five hundred ever dined half so well". (David Copperfield, p.892 (Nelson 1912)).

20. Memoir of the life of Elizabeth Fry, with extracts from her journal and letters edited by two of her daughters. Vol.II, p.159. (London 1848 in 2nd edition).
21. Ibid., p.253.
22. Janet Whitney: Elizabeth Fry, p.235 (Guild Books 1947).
23. Emil Frankel: Crime Treatment in New Jersey, 1668-1934 (Journal of Criminal Law and Criminology, Vol XXVIII, No. 1, pp.98, 99 (May-June 1937) quoted by Gresham Sykes: The Society of Captives, A Study of a Maximum Security Prison. pp. 6, 7. (Princeton U.P.1971).
24. On the other hand, Dostoevsky describing his life in a Russian penal settlement in The House of the Dead or Prison Life in Siberia, in 1849, says "could I ever have imagined the poignant and terrible suffering of never being alone even for one minute during ten years?" (p.11) but he nevertheless maintains "I am convinced that the celebrated cellular system gives results which are specious and deceitful. It deprives a criminal of his force, of his energy ... and at last exhibits a dried up mummy as a model of repentance and amendment". p.17 (Everyman 1916).
25. Sykes: op.cit., p.6.
26. By Section 6 of 1839 Act, certain rules were laid down to be observed everywhere. Among them were:-
 - a) No officer was to gain any benefit from a prisoner.
 - b) The Keeper was to inspect the prison every 24 hours.
 - c) The key of the female side was to be kept by the matron.
 - d) Liquor and tobacco were to be admitted only by written order from the doctor.

- e) Insufficient prisons were to be reported and plans for new ones were to be approved by the Secretary of State.
 - f) Prisoners certified fit by the doctor and already sentenced to transportation could be sent to Millbank: those sentenced to 7-10 years transportation, to Millbank first for $3\frac{1}{2}$ years; 10-15 years transportation to Millbank for 4 years.
27. 2 & 3 V., C.42. 283 Vol. C. 36
28. S.H.D. File No. P 12295/8 p.22.
29. The Prison system. Classification of Prisoners and Institutes, Dumfries Prison.

Part II

1. Minute Book of the Prisons, 1839-40. H.H.6/1
2. Report 1830, p.3.
3. Sheriffs' Report 1840.
4. Reports of the Burgh Commission Local Report, Part I, p.235.
5. Inspectors' Report, 4.75.
6. Report of the Burgh Commission Local Report, Part II, p.117.
7. Report 1830. p.238.
8. Report of the Burgh Commission, Part II, p.117.
 From the ^{1st} Statistical Account of Scotland Vol.XV 1845:-
 When the new Perth jail was built in 1819, the old one was abandoned but later fitted up as a small bridewell. The prisoners were well disciplined and worked separately at teasing hair or picking oakum. "For aliment, they are allowed two diets during the day - in the morning they have oatmeal porridge and milk; and at three o'clock afternoon, they have broth and bread. Thus fed, they enjoy excellent health". (p.136). From 1835-36 there were 39 committals. The average number of days to each being 36 "the prisoners in the common jail cost the town upon an average 5d each per day, those who are here confined cost the town only 1 $\frac{3}{4}$ d per day". (pp.136, 137).
9. Inspectors' Report, 4.81.
10. Reports of the Burgh Commission Social Report, Part I, p.306.
11. Inspectors' Reports, 2.119.
12. Inspectors' Reports, 2.123.
13. Report 1830, p.199.
14. Report 1830, pp. 3, 4.
15. Inspectors' Reports 1.25.
16. Reports of the Burgh Commission, Part II, p.31.

17. Inspector's Report 3.102.
18. Inspectors' Report 4.75.
19. Inspectors' Report 4.152.
20. Inspectors' Report 1.49.
21. Reports of the Burgh Commission Part II p.31.
22. Inspectors' Report 2.109.
23. Inspectors' Report 1.69.
24. Reports of the Burgh Commission Local Report Part II, p.117.
25. Inspectors' Report 4.75.
26. Reports of the Burgh Commission Local Report Part II, p.117.
27. Reports of the Burgh Commission Local Report Part I, p.306.
28. Reports of the Burgh Commission Local Report Part I, p.306.
29. Inspectors' Report 2.126.
30. Inspectors' Report 1.53.
31. Reports of the Burgh Commission Local Report Part I, p.306.
32. Inspectors' Report 1.53.
33. Report of the Burgh Commission Part II, p.31.
34. Inspectors' Report 3.86.
35. Reports of the Burgh Commission Part II, p.325.
36. Inspectors' Report 3.22.
37. Ibid., 3.23.
38. Ibid., 4.166.
39. Ibid., 2.62.
40. Ibid., 3.99.
41. Ibid., 3.26.
42. Ibid., 3.21.
43. Ibid., 2.85.
44. Ibid., 3.61.
45. Ibid., 3.26.
46. Ibid., 2.68.
47. Report 1830, p.260.
48. Inspectors' Report 2.48.
49. Ibid., 2.48.
50. Ibid., 4.96.
51. Report 1830, p.273.
52. Inspectors' Report 3.12.
53. Ibid., 4.166.

Part III - Governors' Journals

1. Governors' Journals of the General Prison at Perth, 1849-51.
2. Ibid., 1847-49.
3. (a) March 1850: a 14-year-old tried to hang himself.
 (b) June 1850: a 16-year-old tried to kill himself and was "doubled up" and "placed under restraint for three days by having both his hands fastened into gloves and chained to his body".
 (c) Oct. 1850: a 12-year-old was put in irons in the Juvenile class for 70 hours for threatening to injure himself.
4. April 1852: a 16-year-old attempted suicide by hanging so partial restraint is ordered and he "is returned to separate confinement". In July 1852, a 17-year-old is "found dead in his cell with a piece of hammock cord attached to the keeper of his window-latch". In October two attempts were made on the same day, and a few days later an attempt was made by a 36-year-old - unusually old.
5.)
6.) Governors' Journals 1845-47.
7.)
8.)
9. In February 1852 a 22-year-old's mind gave way and he was "restrained to bed by straps as very violent and later sent to the Imbecile Prison". (1851-55).
10. Nov. 1847: a 12-year-old, "having become incoherent, was doubled up", and in December an 11-year-old "in consequence of being a weakminded boy was doubled up". In May 1853 an 18-year-old "became incoherent and very noisy during the night and was doubled up as his mind appeared to be injuriously affected by the discipline of separate confinement".
11. In February 1848 an 11-year-old, "having become insane", was sent to the lunatic wing. In July 1848, "a 13-year-old girl was sent to the Lunatic Wing as her mind had given way". In January 1851 a 21- and a 25-year-old were transferred to the imbecile Prison. The numbers who became insane increased in 1851.
12. September 1846: an insane prisoner "was ordered to have a shower bath for offering resistance to the warder in charge of him".
13. October 1852: a 19-year-old under sentence of transportation "became very depressed in spirits and on the recommendation

of the surgeon had extra exercise in the prison corridor lest his mind might be injuriously affected by the discipline of separate confinement'.

14. Journals 1847-49.
15. December 1846: owing to "deficiency of the milk supply at breakfast the average number during the week who received treacle water being 59".
16. April 1847: "On account of the inferior quality of turnips at this season they have been discontinued and leeks and greens are used for the broth. A sufficient quantity of green carrots can only be obtained for the pease soup".
17. Journals 1847-49.
18. On October 27th, 1848 died a 33-year-old man who had escaped in March and had been readmitted on 10th October "in a state of complete exhaustion from disease of the lungs".
19. November 1851: a 27-year-old man died of bronchitis.
20. August 1851: a 13-year-old died of pneumonia, and a 15-year-old in May, 1852.
21. July 1846: a prisoner "died from scrofula contracted before admission".
22. August 1850: James Murray, aged 11, died of "worn out constitution resulting from neglect and starvation prior to admission". July 1852: a 29-year-old died from "debility and broken-down constitution and scrofula;" and in August: "On the opening of the prison this morning a 19-year-old man, a transportation prisoner, was found dead in his bed; he had been falling off for some time, but had no specific complaint".
23. January 1850: a 47-year-old lunatic criminal died "from broken down constitution resulting from insanity". In June a 33-year-old criminal lunatic died from the same condition, and in February 1851 a 72-year-old man (rare to find so old a prisoner) likewise. In September 1852 a criminal lunatic died "of organic disease of the brain".
24. June 1854: a 58-year-old female criminal lunatic died of "creeping palsy which had been coming on her for some time"; and in January 1855 a 44-year-old man died of the same disease.
25. August 1847: a young man "became so frequently and so violently affected with convulsive fits that he was doubled up". In November 1850 a 20-year-old under sentence of transportation was doubled up as he was "seized with epileptic fits".
26. October 1847: on the same day a 15-year-old was sent to a dark punishment cell and handcuffed for 70 hours, a 13-year-old for 34 hours, a 14-year-old for 31, and a 17-year-old for 34. "These boys were punished with handcuffs for calling out in their cells after the proper hours as the Governor considered that there was no other punishment in use here that was adequate for the offence". In November a 13-year-old got 24 hours in handcuffs "for communicating with another prisoner by talking to him in the airing yard". In February 1850 a 13-year-old got 48 hours in irons in a dark punishment

- cell "for signalling from the cell window to prisoners in the airing yards". In January 1849 a 13-year-old got two days in handcuffs in a dark punishment cell for "breaking two holes through the wall of the cell with intent to communicate".
27. December 1848: a 10-year-old was put in handcuffs in his own cell for 31 hours for being "noisy in his cell and being disrespectful towards the teacher". February 1851: a 12-year-old spent three hours in irons in the Epileptic Ward for "being noisy on the Sabbath". October 1847: a 33-year-old was "handcuffed in a light punishment cell for 34 hours for violent and unnecessary beating on the door of his cell".
 28. May 1847: "John Baillie, aged 10 years, has of late become very mischievous, tearing his clothes and destroying his cell furniture; the surgeon does not consider him a fit subject for punishment in the usual way as his mind might give way. And on the 12th he was doubled up with another prisoner". In October a 33-year-old was "handcuffed in a light punishment cell for 67 hours for destroying a bed in the punishment cell and barricading his cell door". In May 1848 a 12-year-old was handcuffed in his cell for 19 hours for wilfully breaking four panes of glass and his food dishes. In January 1849 a 12-year-old got three days in a dark punishment cell, the last 24 hours in irons, for "destroying the mask of his bonnet, his bed-rug, and breaking a hole through the wall of his cell". In November a sad entry: a 16-year-old imbecile prisoner spent two days in irons in the imbecile prison for "disorderly conduct and breaking his cell door with his crutch". In October 1851 an 18-year-old spent six days (three in handcuffs) in a dark punishment cell for "destroying his cell furniture and the glass in his window".
 29. November 1847: "a 15-year-old was handcuffed in his cell for two days for refusing to put down his mask in coming from the airing yard and making use of improper language". In October a 24-year-old was handcuffed in his cell for 48 hours for being disobedient and making use of improper language, and an 18-year-old "is handcuffed in his cell for 24 hours for refusing to keep down his mask, being a doubled up prisoner".
 30. December 1853: a 12-year-old was punished in handcuffs for "talking at exercise and throwing his porridge in a warder's face".
 31. August 1847: John Darling, aged 17, was punished by "being put in irons in his cell for having (apparently) made an attempt to commit suicide".
 32. October 1848: Two warders were suspended for two days for getting back $\frac{2}{3}$ of an hour late and climbing over the prison wall.
 33. October 1849: The Governor going on his rounds found the inside night watchman asleep on duty. He was immediately dismissed. December 1849: On the Governor's rounds a night watchman was found in the Juvenile Prison asleep at his post at 11.22. The Governor dismissed him at once. In July 1854 and again in September the Governor found night watchmen in the Juvenile Prison and the Imbecile

Prison asleep at their posts for which they were immediately dismissed.

34. January 1850: The Superintendent of the Juvenile and Imbecile Prisons was suspended by the Governor for "repeated acts of intoxication", and a few days later his "services were dispensed with by direction of the General Board in consequence of severe acts of intemperance". December 1852: A warder in the Juvenile Prison "appeared this day on duty in a state of intoxication and was dismissed". October 1853: A warder in the Lunatic Wing "came to the prison in a state of intoxication to take his usual evening duty ... and on being charged with that impropriety he resigned his situation".
35. December 1846: A female warder had "contrary to express orders taken out a prisoner to assist her to extinguish the gas" and on returning her to her cell she forgot to lock it. Next morning the prisoner emerged from her cell and proceeded to lock the female wardresses in their room. The offending wardress was dismissed the same day.
36. June 1848: The assistant matron was sacked by the matron "for general inefficiency", but her successor, appointed on the 13th was "dismissed by the matron on the 25th as being a very unsuitable person for the office". January 1849: The assistant matron "who has been for a short time on trial as sub-matron was found not qualified for office, and this day her services were in consequence discontinued". There were a variety of other reasons: April 1849: A warder was dismissed "for absenting himself from duty and causing to be made to the Governor a false statement as to the reason of his absence". December 1852: A night watchman was dismissed "because of improper communications made by him to a prisoner". November 1853: A warder was dismissed by the Governor "for unlawfully employing prisoners in his private service". January 1854: The Assistant Shoemaker Warder was dismissed by the Governor "for omitting to lock the two outside doors leading from the prison to the airing yard of which he had special charge at the time".
37. October 1852, June 1853.
38. May 1848.
39. August 1851: The weaver warder resigned his situation on the ground that his duties were too arduous for him. December 1853: "The store warder recently appointed resigned his situation this day on account of the arduous nature of the duties". August 1851: "The furnace warder resigned ... he assigned as a reason that the head Warder was in the practice of making use of unnecessarily severe language towards him".
40. May 1847: A female warder resigned, departing for Dundee "to commence business as a milliner". July 1853: The store warder resigned "having obtained another appointment".

April 1854: The assistant shoemaker warder resigned: he 'ceased his duties at the prison with the intention of emigrating to America'.

41. July 1852: The night watchman ceased his duties inside the prison 'having resigned his situation without assigning any reason for so doing'.
November 1853: A warder in the Juvenile Wing 'ceased his duties without assigning any reason for so doing'.

The Journals for 1851-55 break off in January 1855, and from that date until 1862, cannot be traced either by Perth Prison or the Scottish Record Office.

42. Report of the Commissioners appointed by the Lords Commissioners of H.M. Treasury to inquire into certain civil departments in Scotland, p. 152 (Edinburgh 1870).
43. Ibid., p.152.
44. Ibid., pp. 154, 155.
45. Report of the Commissioners (see note 42) p.150.
46. Ibid., p.151.

During this period covered by the Governors' Journals at Perth 1845-55, the prison Visitors' Book lists the type of people who came there. They include governors of English jails and those of the Scottish ones, ministers, chaplains, Edinburgh advocates, provosts, knights and dukes, foreign dignitaries. Surprisingly, at a time when young girls were carefully sheltered from the harsh and seamy side of life, 'a party of young females' would frequently be in the family party shown round the prison. 1843 was a busy year with 306 visitors. Sometimes their comments are included. Thus in 1842 a Greenock magistrate 'was quite delighted with the health and condition of the prisoners', and in 1844 a Glasgow manufacturer expressed himself 'very much pleased with the whole economy of the establishment', and a Berkshire J.P. considered the gaol 'very clean and orderly'. In 1846, a visitor from Berlin came to inspect the prison 'by order of the King of Prussia', made no comment. In 1849, the prison was honoured by a visit from H.R.H. Prince Albert accompanied by Secretary of State, Sir George Grey, and Sir James Clark H.M.'s Physician'. In 1852 came the Governors of Heriots' Hospital and Officials connected therewith - 17 in party, and 'a family from Madras Civil Service with daughters'. Visitors to the General Prison of Scotland, 1842-98. (West Register House H.H.12/62).

47. Minute Book of the Prisons, 1853-54. Scottish Record Office (West Register House) H.H./6/12 pp. 13, 14.
48. Ibid., p.53.
48a. Ibid., p.60.

- 48b. Ibid., p.51.
- 48c. Ibid., p.52.
- 48d. Ibid., p.54.
- 49. Governors' Journals at Perth 1862-65, West Register House, H.H.12/63/5.
- 50. S.H.H.D. File no. P 12295/1.
- 51. Ibid.
- 52. Ibid.

Part IV - Transportation

- 53. West Register House A.D./58/97.
- 54. Take the terrible example of one James Williams who was transported aged 19 and died in 1849 having spent 20 years in irons, and suffered more than 2,000 lashes. Marcus Clarke: His Natural Life, p.237 (Edited by S. Murray-Smith, Penguin Books 1970).
- 55. Thus Abel Magwitch in Dickens Great Expectations . "I was sent for life. It's death to come back. There's been overmuch coming back of late years, and I should of a certainty be hanged if took". p.327 (Nelson 1912).

By an Act for abolishing Capital Punishment in case of returning from Transportation, 1834, punishment of transportation for life was substituted for the death sentence in such cases.

- 56. December 1851: "This day forty three convicts under sentence of transportation were removed with a view to transmission to the 'Stirling Castle' hulk at Portsmouth by order of Secretary, Sir George Grey". Governors' Journals, Perth 1851-55.

April 1852: "Eleven convicts sentenced to transportation and undergoing probationary confinement in this prison, were removed for transmission to the 'Warrior Hulk' at Woolwich by authority and direction of the Secretary of State". The surgeon had "ordered them an allowance of 4oz. of extra food each, three times a week, in addition to their ordinary diet, in consideration of their being intended for labour on public works on removal from this prison". Governors' Journals, Perth 1851-55.

Part V - Towards Centralisation

- 57. Charles Reade It's never too late to mend , 1856.
- 58. S.H.D. File no. P12295/8.
- 59. 23&24.V., C.105. S.L.11.
- 60. Ibid., S LXIII and S LXIV.

Notes Chapter VI 1877-1908Part I

1. D. L. Howard: John Howard: Prison Reformer, p.168 (London 1958).
2. "it was not an easy task to obtain his acquiescence" over the matter of the 1779 Penitentiary Houses, and Howard resigned from the office of supervisor in January, 1781. John Aikin: A view of the character and public services of the late John Howard, p.107, (London 1792).
3. D. L. Howard, op.cit., p.169.
4. The appalling condition of some U.S. county jails to-day, where no central authority is in control, emphasises this fact. At the Cummins Prison Farm, Arkansas, "convicts stoop in the vast cotton fields twelve hours a day, 5½ days a week - for zero pay ... A virtual slave plantation in the 20th century". Time 18.1.71.
5. Report of the Commissioners appointed by the Lords Commissioners of H.M. Treasury to inquire into certain civil departments in Scotland, 1870, p.156.
6. An Act to amend the Law relating to Prisons in Scotland 1877 "remains the principal Act governing the administration of Scottish prisons". The Scottish Prison System, p.3 (H.M.S.O. 1949). 40841 Vict. c.53
7. First Annual Report of the Prison Commissioners for Scotland being (in continuation of the Reports of the late General Board of Prisoners and the Managers appointed under the Act of 1860), the fortieth annual Report on Prisons in Scotland. vol. 1878-84. p.30 of Preface to 1878-79 report.
8. Ibid., p.3.
9. Ibid., p.3.
10. Ibid., p.4.
11. Ibid., p.4.
12. Ibid., p.4.
13. Ibid., p.4.
14. Ibid., p.4.
15. The Scottish Prison System, op.cit., p.4.
16. Penal Servitude Act 1853. "An Act to substitute, in certain cases, other Punishment in lieu of Transportation". 16817 Vict. c.99
17. Christopher Hibbert: The Roots of Evil. A Social History of Crime and Punishment, p.188 (Penguin Books 1966).
18. The Gladstone Report: Report from the Departmental Committee on Prisons 1895. Para. 25 Command 7702.

19. Ibid., para.47. The Report's recommendation that crank and treadmill be abolished (para.40) contrasted with the 1863 House of Lords Committee's recommendations of hard labour, hard fare and hard bed. The Report recognised that "Recidivism is the most important of all prison questions and it is the most complicated and difficult". (para.18).
20. Prison Act 1898. 61 & 62 Vict. c.44
21. Rupert Cross: Punishment, Prison and the Public, p.19 (London 1971).
22. Ibid., p.19.
23. Ibid., p.20.
24. The Criminal Justice Act 1961. "An Act to amend the law with respect to the powers of courts in respect of young offenders".
25. Oscar Wilde: The Ballad of Reading Gaol, in Complete Works of Oscar Wilde. pp.848, 858 (Collins 1969).
26. Ibid., p.857.
27. Oscar Wilde: The case of warder Martin: some cruelties of Prison Life: in a letter to the Daily Chronicle. Ibid., p.962. Written ten days after Wilde's release from prison, May 1897.
- 28 & 29. Prison Reform, a letter to the Daily Chronicle March 1898.
Ibid., p.965.
- 30 & 31. Ibid., pp.966, 967.
32. Ibid., pp.968, 969.
33. W. B. Neville: Penal Servitude p.81 (London 1903).
34. Ibid., pp.76, 77.
35. Ibid., p.104.
36. The Rules for Prisons in Scotland 1888 gives the rules for prison diet:-

<u>Rule 395</u>	"In one day -
Table VII	2 pints barley broth.
	1½ ozs. cheese.
	12 oz. wheaten bread".
And	"In one day -
	1 lb. suet pudding.
	1 pint barley broth.
	12 ozs. wheaten bread".

<u>Rule 395</u>	"For females same diet, except that the allowance
Table X	of meat shall not exceed 6 ozs." And "on one day
	of the week Bread.
	16oz. fresh fish.
	1 lb. of potatoes.
	Broth.
	Pudding might be added".

Rule 402 " $\frac{3}{4}$ oz. molasses or sugar and seasoned with salt".

Rule 409 "Fish soup to be made with the head and trimmings of the fish, with $\frac{1}{2}$ oz. flour added for every $\frac{1}{2}$ pint of soup, and 1 gallon of skimmed milk and $\frac{3}{4}$ oz. pepper added for every 50 pints of soup."

Rule 419 "Fish to be weighed after being cleaned and trimmed, but before being cooked".

Board of Agriculture Report 1889 Prisons (S) includes Rules for Prisons in Scotland, settled and approved 1888 by Secretary for Scotland under Prisons (S) Act 1877 and Secretary for Scotland Acts 1885 and 1887.

37. Neville, op.cit., p.290.
38. William Sievwright, p.48 of Historical Sketch of the General Prison for Scotland at Perth (1894).
39. Ibid., p.49-51.
40. Neville, op.cit., pp.128, 129.
41. Ibid., pp.136, 137.
42. Ibid., p.255.
43. Ibid., pp.295, 296.
44. William Sievwright, op.cit., pp.88-90.

Part II

1. See Part I.
2. The corresponding numbers for 1840 had been 1,362 males, 686 females, total 2,048, but the population then was only 2,600,692. Report of the Prison Commissioners (S) 1898-1904. App. II, p.13.
3. Ibid.
Appendix 1, p.12 of 1898 Report. These were, for both civil and criminal prisoners, Aberdeen, Ayr, Dumfries, Dundee, Edinburgh, Glasgow, (Barlinnie General), Glasgow (Duke Street), Greenock, Inverness, Kirkwall, Lerwick, Perth General, Stornoway. Peterhead was for male convicts only. There were also many police cells legalised under Section 30 of Prisons (S) Act 1877 for imprisonment of not more than 14 days.
4. Ibid., App. IX, p.21 of 1904 Report.
5. Ibid., App. II, p.13 of 1904 Report. The Reports pointed out that sometimes the numbers differ from those corresponding in previous reports, the reason being given that errors made were subsequently discovered.
6. This clearly uneconomic prison structure fore-shadowed the closure of many such prisons by the end of the century.

7. Apps. XVIII and XIX p.28 of 1898 Report (in same vol.).
8. App. XVIII and XIX p.27 of 1904 Report (in same vol.).
9. Ibid., p.72 for 1878-79 Report.
10. Preface to 1898 Report p.8.
11. P.6 of Preface to 1904 Report.
12. App. XX pp. 28, 29 of 1904 Report (in same vol.).
13. P.9 of Preface to 1898 Report.
14. Ibid., p.6.
15. Ibid., p.6.
16. Ibid., p.6.
17. Ibid., p.6.

"our attention has been drawn to the last Reports of the Chief Constables of the Cities of Glasgow and Liverpool, which are in many respects similarly situated as regards population. In Glasgow, with a population of about 725,000, about 19,000 persons were taken into custody for drunkenness and 21,000 for breach of the peace and petty assaults, while in Liverpool, which has a population of about 630,000, the cases of drunkenness and disorder were only 4,339 and common assaults about 800". Report of the Prison Commissioners 1898-1904. p.7 of Preface to 1898 Report.

18. P.5 of Preface to 1904 Report.
19. Ibid., p.6.
20. Ibid., p.5.
21. Ibid., p.6.
22. App. XXII p.32 of 1898 Report.
23. App. XXII p.81 of 1904 Report.
24. App. V p.29 of 1884 Report in vol. 1878-84.
25. App. XVII p.27 of 1898 Report in vol. 1898-04.
26. App. XVII p.26 of 1904 Report.
27. P.7 of Preface to 1878 Report in vol. 1878-84.
28. P.10 of Preface to 1898 Report.
29. App. XI pp.38, 39 of 1884 Report.
30. App. XII pp. 40, 41. Ibid.
31. See Part I note 36 on Scottish prison diet.
32. App. no. VII, p.24 Rules issued by the Secretary of State under Prisons (S) Act 1877, 1878 Report being First Annual Report of the Commissioners under Prisons (S) Act 1877.
33. Ibid., pp.24, 25.
34. Ibid., p.25.
35. pp.82, 83 of 1878 Report.

36. App. XXIX p.40 Report of Medical Advisors to the Prison Commissioners for the year 1898. vol. 1898-1904.
37. App. XXIV p.34. Report of Medical Advisors for 1904. Ibid.
38. App. XXVII pp.38-41. Ibid.
39. P.84 of 1878 Report in vol. 1878-84.
40. App. XXVI. p.99 1882-83 Report.
41. Ibid., p.99.
42. P.8 of Preface to 1879 Report.
43. P.8 of Preface to 1898 Report.
44. P.7 of Preface to 1904 Report.
45. P.9 of Preface to 1883-4.
46. Ibid.
47. pp.7, 8 of Preface to 1898 Report.
48. pp.7, 8 of Preface to 1904 Report.
49. App.VI p.22 of 1880 Report.
50. App. XIV p.23 of 1898 Report.
51. Ibid., p.24.
52. App. no. XIV p.23 of 1904.
53. App. XIX p.82 for 1883 Report.
54. App. XXXI p.103 1882-83 Report.
55. App. XXXIV p.106 1883 Report.
56. App. XXXIX p.74 1898 Report.

Part III

1. S.H.D. File No. P.12295/6.
2. S.H.D. File No. P.12295/1.
3. S.H.D. File No. P.12295/8.

For some years after Perth General Prison was opened, Divine Service was conducted each Sunday in the corridors with cell doors partly opened and so adjusted - by means of an ingenious contrivance invented by a prisoner - as to enable the occupants to hear the preacher without seeing each other or leaving their cells. This arrangement continued until the present chapel was opened in 1845. At that time the chapel provided for a congregation of some 200 prisoners each in separate boxes, designed to prevent the occupant being seen by other prisoners although visible to the chaplain and prison officials. The M.O.'s quarters which subsequently became the Governor's House and later a Training for Freedom hostel was rebuilt 1933. S.H.D. File No. P.12295/8, p.2.

4. S.H.D. File No. P.12295/9.
5. S.H.D. File No. P.12295/9.
6. S.H.D. File No. P.12295/2.
7. S.H.D. File No. P.12295/4.
8. S.H.D. File No. P.12295/1.

Notes Chapter VII.

1. Christopher Hibbert: The Roots of Evil: A Social History of Crime and Punishment, p.226 (Penguin Books 1966).
2. John Howard: The State of the Prisons, p.6 (Everyman's Library 1929).
Howard found that at the Bicêtre, Paris, "a kind of general hospital", the criminals, the poor, the insane and those with venereal disease were all housed separately. p.133.
3. Ibid., p.150.
4. Ibid., p.150.
5. Ibid., p.156.
6. a) In 1805, the Rev. James Scott, minister of the East Church, Perth, wrote to Bailie Duff, requesting that Grissel Kelly, "much deranged in her mind and so unmanageable that no private person will take charge of her", continue in detention in the tolbooth "till she become more calm". The Kirk Session provided for her maintenance. "She has a daughter in the town who upon receiving some allowance of money would make meat and carry it to her mother". But evidently only if she received "some allowance". (Original letter in Perth Museum).
b) In 1833, Dr. Stewart, surgeon to Perth jail, certified on "soul and conscience" that a male prisoner in the Tolbooth, having attempted suicide by making a "considerable incision in his throat" and now lying dangerously ill, "in consequence of his state of mind is not a fit object for confinement in a common prison, and can only be properly attended to in an asylum for the insane". (Original letter in Perth Museum).
7. An Account of the Dundee Infirmary: and Report of the Committee appointed to carry into effect the proposal for a Lunatic Asylum at Dundee, pp.3, 4, of the Second Report of the Directors of the Dundee Lunatic Asylum, for year ending 1822.
For example, insane prisoners confined in the prison hulks were treated even more harshly, more soundly flogged, than their sane companions. Sometimes they were "confined in a cramped cage" on ship board.
W. Branch-Johnson: The English Prison Hulks, p.183. (London 1957).
8. Letter from Dr. Andrew Duncan, 1818 concerning the death of Ferguson. (In the archives of Royal Edinburgh Hospital).
9. Letter in archives of Royal Edinburgh Hospital.
10. Ibid.

11. Printed statement The Charity Workhouse and the City Bedlam, (In possession of Royal Edinburgh Hospital).
12. Ibid.
The asylum "was situated in an angle of the city wall. It was a dismal-looking mansion shut in on every side by the neighbouring houses - I shuddered as I looked up to its blackened walls, thinly sprinkled with miserable-looking windows, barred with iron; and thought of it as a sort of burial place of dead minds. But it was a Golgotha which, with more than the horrors of the grave, had neither its rest nor its silence". Hugh Miller: Tales and Sketches, (Edinburgh 1876), p.48.
13. Letter from Dr. Duncan, op.cit.
14. Focus on Change, p.16 (Pamphlet of the Royal Edinburgh Hospital 1965).
15. Ibid., p.16.
16. Ibid., p.17.
17. "In the Hospital of Glasgow, some wards had been long set apart for the reception of the insane. But these wards ... were quite unsuited either to the cure or the comfort of the patients". Report of the General Committee appointed to carry into effect the proposal for a Lunatic Asylum at Glasgow, p.4. (Glasgow 1814).
"The plan of the Glasgow Lunatic Asylum is founded on the principle of promoting both the cure and the comfort of the insane. These objects also it seeks to accomplish both for the wealthy and the poor". Ibid., p.5.
18. An account of the Dundee Infirmary: and Report of the Committee to carry into effect a proposal for a Lunatic Asylum at Dundee. (Dundee 1815). p.12 of Constitution and Regulations of the Dundee Royal Lunatic Asylum.
19. Ibid., p.25.
20. Ibid., p.15.
21. Regulations of the Glasgow Asylum for Lunatics erected by public contribution. p.18 of Report of Committee for Lunatic Asylum at Glasgow, op.cit.
- 21a. Second Report of Directors of Dundee Lunatic Asylum for 1822. p.10 of the medical report.
22. David Peacock: Perth: Its Annals and its Archives, p.498 (Perth 1849).
George Penny: Traditions of Perth p.269 (Perth 1836), waxes enthusiastic on the opening of Murray's Asylum 1827. "This establishment, the admiration of strangers, and allowed to be the first of the kind in Britain, both for cleanliness and attention to the unhappy inmates. ... The meanest patient is well fed and clothed, and those from among the higher classes who can pay for it,

are as well lodged and cared for, as they could be in a palace - No coercion is used; everything is mild and soothing to their feelings ... Each person has a separate room. To frustrate any attempt on their lives, the curtains of the beds are hung from the roof in such a way, that if eight pounds weight were attached to them, the whole would come down".

23. Scottish Lunacy Commission. Report by H.M. Commissioners appointed to inquire into the State of Lunatic Asylums in Scotland, 1857. Appendix B, p.102.
24. Ibid., p.103.
25. American Asylum Reports, vol.III, Massachusetts 1849 Annual Report of the Board of Trustees of the Massachusetts General Hospital for the year 1833 p.3. and Annual Report for 1836, p.3.
26. Hospital of St. Mary's of Bethlehem, (corrupted to Bedlam), London, was transferred to Moorfields 1676 and is the subject of one of Hogarth's pictures.
27. Hibbert, op.cit., p.62.
28. The Scots Statutes Revised, vol. I of The Public General Statutes affecting Scotland, 1707-1819, p.227 (W. Green, Law Publishers Edinburgh, 1899).
29. Ibid., p.228.
30. Quoted by Rev. Henry Willox: Her Majesty's Pleasure in Scotland and other matters concerning criminal lunatics and mental defectives of violent tendencies and criminal propensities, p.5 (Carnwath 1967) Lent by Professor Macrae.
31. Quoted by Willox, p.6.
32. Ibid., p.6.
33. Minute Book of the Prisons, 1839-40, p.260 Scottish Record Office (West Register House) HH/6/1.
34. Ibid., p.260.
35. Ibid., p.263.
36. Scottish Lunacy Report 1857 (see note 23).
37. App. B P.100 Criminal Lunatic Wards, General Prison, Perth. Ibid., p.101.
38. Ibid., pp.101, 102.
39. S.H.D. File no. P.12295/8, p.22.
40. A General Register of patients in Asylums: a list of asylums and patients, private or pauper, when admitted and when discharged. 1805-62. (West Register House, M.C./7/1).
41. 1841 Madhouses (Scotland) Bill: Lord Advocate's Papers, West Register House, AD/58/107.

42. Lunatic (Scotland) Bill 1847-49 relating to the care and custody of Lunatics and for the better regulation of Lunatic Asylums and for the establishment of Asylums for Pauper Lunatics. Ibid., AD/58/106.
43. Ibid.
44. Ibid.
45. Printed paper dated March 5th 1849 in envelope with Lunatic (S) Bill 1847-49.
46. Memorial addressed to Lord Advocate by the Managers of the Crichton Institution 1849 under cover of a letter from Dr. Browne, chairman of a meeting of Medical officers and proprietors of Public and Private Asylums who drew it up. In same pocket as no. 45.
47. Printed paper General Meeting of the Commissioners of Supply for the Stewartry of Kirkcudbright 1849. In same pocket as nos. 45 and 46.
48. In the seventeenth and eighteenth centuries the Kirk Session distributed Poor Relief, relying on voluntary subscriptions, and fines from the charges against morality. With the spread of urban unemployment in the early nineteenth century, this Poor Relief no longer worked. The Scottish Poor Law Reform Act 1845 introduced the principles of mandatory rating, central supervision and legal relief for the able-bodied.
49. Lunatic (S) Act 1857 p.10, para. XVIII Lord Advocate's Papers in Lunacy Box 89 Scottish Record Office (West Register House).
50. Ibid., para. XLVI.
51. Ibid., para. XXIII.
52. Ibid., para. LXXXII.
53. Report of Commissioners on Lunacy Vol. II, p.34.
54. Memorandum by the Secretary of the General Board of Prisons on the working of the law relating to Criminal Lunatics, June 1859. Lord Advocate's Papers on Lunacy, Letters and Reports, Box 89 (West Register House).
55. Ibid., p.4.
56. Ibid., p.8.
57. Ibid., p.13.
58. Ibid., p.13, para. 13.
59. Ibid., p.13, para. 14.
60. Ibid., p.17, para. 16.
61. Ibid., p.18, para. 17.
62. Ibid., p.19, para. 18.
63. Ibid., p.20, para. 19

64. Daily Courant April 1860, Lord Advocate's Papers, Box 89. (West Register House).
65. Dangerous and Criminal Lunatics (S) Bill, 1861 Lunacy Legislation, Lord Advocate's Papers on Lunacy, Box 88.
66. Lunacy (S) Act 1862. para. LXXXVI Lunacy Legislation, Box 88.
67. Lunacy (S) Amendment Act 1866. para. VI. Box 88.
68. Criminal and Dangerous Lunatics (S) Amendment Act 1871, paras. 4 and 6 Lunacy Legislation Box 88.
69. Letter from Hill Burton Prison Manager Box 88.
70. Pamphlet on dangerous lunatics, April, 1871 with letter from Secretary of General Board of Lunacy, Edinburgh Box 88.
71. Letter from Prison Managers, Castle Terrace, Edinburgh, January 1872 to the Home Office. Lord Advocate's Papers Box 89. (West Register House).
72. Ibid.
73. Letter from Hill Burton February 1872. Box 89.
74. 10th Annual Report on Prisons (S) Box 89.
75. 11th Annual Report on Prisons (S) Box 89.
76. Letter to the Lord Advocate April 1874 Box 88.
77. Lunacy Districts (S) Act 1881 Box 88.
78. Memorandum on the Criminal Lunatics Bill 1884 by Dr. Mill. Box 88.
79. Act to amend the Law relating to Criminal Lunatics 1884 Box 88.

At this date, with regard to "insane persons who are not paupers and who are not placed in establishments for the insane - it is not required by the statutes that all of them should be under our supervision. It is only in certain circumstances that such persons require to be certified and reported to us. Whereas all pauper lunatics, in establishments or private dwellings are brought under supervision". 26th Annual Report of the General Board of Commissioners in Lunacy for Scotland, para XXXVII 1884. Edinburgh C 4110.

80. Report of the Prison Commissioners for Scotland 1898-1904. For 1898 App. I. p.12.
81. Ibid., Preface to 1898, p.8.
82. Ibid., p.10.
83. Report of the Prison Commissioners for Scotland, 1898-1904. Medical Superintendent's report for 1904, App.XLVI p.82.
84. Report of the Prison Commissioners for Scotland, 1898-1904. Preface to 1904, p.9.
- 84a. Mental Welfare Commission M.C. (West Register House).

85. Quoted Willox op.cit., p.60.
86. Ibid., p.64.
87. State Hospital, Carstairs - The Scottish Special Hospital, p.1. Paper prepared by State Hospital, Carstairs, February 1974.
88. Ibid., p.1.
89. Willox, op.cit., p.136.
90. Quoted by Willox, p.136.
91. Ibid., p.138.
92. Ibid., p.144.
93. Willox, op.cit., p.154.
94. State Hospital, Carstairs, (see note 87).
 - a) In the first full-scale study of the workings of the 1960 Mental Health Act, Nigel Walker and Sarah McCabe in Crime and Insanity in England (E.U.P.) "question whether this process of unloading people from prisons into hospitals has now gone far enough ... Psychopaths ... may be released from hospital sooner than they would be from prison ... only to commit more crimes". Sunday Times, 4.3.73.
 - b) The Butler Committee on Mentally Abnormal Offenders to study the changes needed in the treatment of mentally ill criminals, stated, "There was growing concern in the Home Office and the prison medical services over the increasing number of mentally abnormal people in prison". Gross overcrowding at Broadmoor and other "special" hospitals shocked the committee where interim report presses urgently, "for the setting up of regional 'secure' hospital units within the National Health Service" to relieve pressure on special hospitals and "provide an alternative for some of the more disturbed inmates of prisons". Scotsman, 19.7.74.
95. State Hospital, Carstairs, op.cit., p.2
96. Ibid., pp. 2, 3.
97. Ibid., p.4.
98. Ibid., p.5.
99. Evening Telegraph 17.12.70.
 In this context mention should be made of the disturbing break-out from the State Mental Hospital on November 30th 1976 when two patients murdered a male nurse, a patient and a policeman during their escape. They were caught and subsequently charged with murder. The affair led to great concern about security at the hospital, charges that senior staff allowed too much freedom to dangerous men, and threats of strike action by nursing staff. Sergeant Joe Black, secretary of the Scottish Police Federation, attacked the psychiatrists involved saying, "We have gone overboard for treatment rather than the protection of the public. We must restore the balance". Scotsman, 2.12.76.

Notes Chapter VIII

- * Buxton, Sir T. Fowell: Inquiry whether Crime and Misery are produced or prevented by our Present System of Prison Discipline, p.22 (London 1818).
1. Quoted by R.S.E. Hinde: The British Penal System 1773-1950, p.44 (London 1951).
 2. J. Devon: The Criminal and the Community (1912).
 3. J.E. Thomas: The English Prison Officer since 1850. A study in conflict, p.157 (London 1972).
 4. Paterson on Prisons: collected papers of Sir Alexander Paterson. p.23 (London 1951).
 5. Ibid., p.23.
 6. Ibid., p.96.
 7. Ibid., p.22.
 8. Rae: Conscience and Politics: The British Government and the C.O. to Military Service, 1916-1919, p.226 (London 1970).
 9. The famous Cat and Mouse Act of the suffragettes.
 10. Rae, op.cit., p.103. At the Barrhead Local Tribunal, Maxton found the Military Representative "extremely fair" in that he "maintained an attitude of complete impartiality throughout the entire sitting".
 11. Kirkwood, Chief shop steward at Parkhead, was one of the six leaders of the Clyde Workers' committee. They opposed the Munitions of War Act. Kirkwood's My Life of Revolt p.149 (1935) gives a curiously self-pitying account of his brief (14 days) imprisonment.
 12. English Prisons to-day: Being the Report of the Prison System Inquiry Committee. Edited by S. Hobhouse and F. Brockway (London 1922). Hobhouse and Brockway prepared the evidence for the Labour Research Department's inquiry into the prison system, and as former C.O.s gave first hand evidence. They declared "The most manifestly dehumanizing prison rule is that which demands silence on the part of the prisoners". (p.355) And in the routine of the prisons "Self-respect is systematically destroyed and self-expression prevented in every phase of prison existence.... The labour is mostly mechanical and largely wasteful... The sanitary arrangements are degrading and filthy, and the dress is hideous, slovenly

and humiliating... To the vast majority of prisoners recreation is totally unknown... A letter may not be written to (or received from) home until two months of sentence have been served".

13. Paterson, op.cit., p.102.
14. Ibid., pp.105, 106.
15. Peter Wildeblood: Against the Law , p.154 (London 1955). Author was sentenced to 18 months for homosexual offences.
16. Zeno: Life , p.180 (London 1968). Author served 9 years for murder.
17. Ibid., p.19.
18. Ibid., p.63.
19. Life in the Scottish Prison Service (Foreward in pamphlet 1973).
20. Application for Appointment to situation of Officer in Scottish Prison Service . Enclosed notice to candidates No. 319, para.1 RE 1673 TBL.
21. Ibid., para. 5.
22. Ibid., para. 9.
23. Ibid., para. 9.
24. Ibid., and enclosed tests. No.319 RE 20301 TBL:
Test A asks the candidate to select the correct word or phrase and underline it:-
 - 1) He (flew to America as this was more convenient
 (flew
 (flied
 (in going by sea
 (than going by sea
 (from going by sea
 - 2) The (garbidge was (litterring the street
 (garbage (littering the street
 (garibage
25. Life in the Scottish Prison Service , op.cit., under "Opportunities and Training".
26. Prison Service Journal No.12, new series, p.22 (October 1973).

27. Warders feel the welfare and social workers "interfere with their efforts to establish constructive human relationships with the prisoners". Scotsman 7.4.72.
28. Hugh Klare: People in Prison p.39. (Pitman's 'Eye on Society' Series).
29. Programme on Prisons Part I, "The Screws", BBC 2 10.10 p.m. 20.2.74.

Note: "The Home Office is now acutely aware of the problem of finding better officer material. One selection board chairman says 'Of those we recommend for training I would think only a third will ever be fit for promotion'. Just after the Second World War, the Officers' Training School at Wakefield turned out fully fledged prison officers in only three weeks. 'We just taught them how to turn the key', said one senior officer laconically". Sunday Times 17.5.70.

30. Hugh Klare, op.cit., p.33.
31. Prisons in Scotland 1972, p.25, para. 108 C.5349.
32. Jessica Mitford: 'Kind and Usual Punishment', p.8 (New York 1973).
33. Ibid., pp.9 and 10. The advanced age of the guards is a U.S. pattern "most prisoners are under thirty years of age, yet 74 per cent of the prison guards are over thirty-four, and many are middle-aged and elderly". H. Badello and M. Haynes: A Bill of No Rights. Attica and the American Prison System. p.9 (New York 1972).
34. Gresham M. Sykes: The Society of Captives. A study of a maximum security prison, pp.58 and 59. (Princeton U.P. 1958).
35. The Tasks of Penology: A Symposium on Prisons and Correctional Law. Edited by H.S. Perlman and T.B. Allington. Chap. II, Nathan Leopold: "What is wrong with the Prison System?" pp.35 and 36. (University of Nebraska Press 1969).
36. Prisons in Scotland, Report for 1972, p.15 para. 68.
37. Zeno, op.cit., p.55.
38. Wildeblood, op.cit., p.159.
39. Penal Practice in a Changing Society 1959, p.16 para. 69. C.645.

40. The scheme introduced in 1939 allowed only small sums "related to the price of cigarettes at that time. The wages ranged from 3d to 1/- per week with an average of 7d". p.8, The Scottish Prison System . (H.M.S.O. 1949).

But "any proposal to pay prisoners substantially higher amounts than at present is justifiable only if it is established that the value of the prisoners' work would support such payments ... it is impracticable to pay them full wages before the introduction of a really efficient organisation for the employment of prisoners including a proper costing and accounting system". (The Organisation of Work for Prisoners , p.10 para. 35, H.M.S.O. 1964). Practical difficulties are that "Some prisoners are not inclined to work and others lack the adaptability to take on even fairly routine jobs. A small proportion would probably be regarded by any outside employer as unemployable". (People in Prison , p.26, para. 47, H.M.S.O. 1971).

41. Prisons in Scotland. Report for 1972 . p.10, para. 44. C.5349.
42. Ibid., p.22, paras, 94 and 96.
43. People in Prison op.cit., p.34, para. 70.
44. Prisons in Scotland. Report for 1972 . op.cit., p.23, para. 98.
45. The Scottish Prison System (H.M.S.O. 1949) App.C, p.40.
46. People in Prison op.cit., p.33, para. 67.
47. Despite great pressure to bring back corporal punishment, the Advisory Council on the Treatment of Offenders 1959 resisted this in its 1960 report. In 1948, Peterhead Prison was "the only Scottish prison in which flogging can be given and none of the evidence which we have received has convinced us that it is necessary". The Scottish Prison System 1949, p.32, para. 155.
48. Parole. All prisoners serving over 18 months are eligible for release on parole after serving one-third of sentence or twelve months whichever is the longest. Parole always entails a licence and is not something to which the prisoner is entitled as of right; "He must apply for it and, judging from the 1970 figures, the chances are about seven to three against his getting it on first application". (Rupert Cross: Punishment, Prison and the Public p.91. London 1971).

Parole is "far from popular with many prisoners, convinced that it is just an opportunity taken by the prison authorities to raise hopes only to dash them cruelly". Sunday Times 28.7.74.

"Opting out by prisoners has remained fairly low, with a national figure in 1972 of about 7 per cent ... figures compare favourably with the far higher rates of self-refusals recorded in Scotland". (Prison Service Journal April 1974, No.14, p.4, Lord Hunt, first chairman of the Parole Board, recently retired). Lord Hunt thinks, "The longer the sentence, the greater the uncertainty, anxiety and cynicism in the mind of the prisoner. It was unkind and inhuman to keep so many people - especially long-term prisoners - in a state of anxiety so long". ('Times' 17.4.74) "Denied both a hearing and a reasoned decision, prisoners have little faith in the system". (Sunday Times 28.7.74).

49. Penninghame, near Newton Stewart, is the only open prison in Scotland. "For selected prisoners who by their behaviour and outlook are considered suitable for open conditions. (No untried prisoners)" (Prisons in Scotland. Report for 1972 p.30, App.No.1).
50. A suspended sentence, a prison sentence whose operation is held over on certain prescribed conditions, and whose object was to keep first offenders, especially the young, out of prison, has been under attack for resulting in more prison sentences and a "move away from probation and fines". (The New Law Journal December 10th 1970, p.1146).
51. Cross, op.cit., p.167.
52. 'Prisons in Scotland. Report for 1972 p.1.
53. "There is no overcrowding in the women's prisons; indeed these in general are not nearly full. Nor is there shortage of work". 'Penal Practice in a Changing Society p.14, footnote.
54. One must, of course, guard against the danger of leaning too heavily on "critical descriptions of the way in which penal measures - usually institutional measures - are administered, some written by penal reformers, others by offenders with a talent for autobiography ... Since the number of people who can gain first-hand experience of prison or probation is limited, this kind of literature is valuable as experience at second-hand; but it must not be mistaken for scientific description". Nigel Walker: Crime and Punishment in Britain p.124 (E.U.P. 1965).

See also European Committee on Crime Problems: Collected Studies in Criminological Research Vol.1. "Research on the Prison Community". Report presented by T. Morris, Reader in Sociology at the London School of Economics. (Council of Europe, Strasbourg 1967):

"It is of course true that the majority of ex-convict authors have been men of above average intellectual capacity, but it does not follow that the experience of imprisonment that they describe has not been shared by others less articulate than they ... It may not be without significance that a careful perusal of this prison literature reveals an underlying generalised concern for the administrative shortcomings of penal institutions rather than what might be termed a naked abuse of power". pp.130, 131. Morris points out that "Prison officials have not, for the most part, been very prolific in their writings" - the lower echelons of staff have written nothing, and prison governors have confined themselves to reports.

55. Allan K. Taylor: From A Glasgow Slum to Fleet Street pp.82 and 136. (London 1949).

Note that in America "prison" is now known as a "correctional facility" and the "Prison System" as the "Correctional Scheme", with no apparent effect on the incidence of crime.

56. Wildeblood, op.cit., p.142.

57. Ibid., p.187.

58. Zeno, op.cit., p.190.

59. Ibid., p.187.

60. Sunday Times Colour Supplement, Portrait of a Criminal, Part II, p.102, November 4th 1973.

61. Buxton, op.cit. p.40.

In addition the words of David Haggart written in the Iron Room of Edinburgh Jail where he lay condemned to death, July 1822: "A prison is the blackest and wickedest place in the world. Many a poor boy is brought to the gallows at last, because his first offence is punished by imprisonment. I cannot say that my bad habits were learned in jail, but I am sure they were confirmed there". The Life of David Haggart: "a true account ... partly written By myself and partly Taken down from my own lips while under Sentence of Death". 1822, pp. 134, 135.

62. Prison Service Journal, No.14, April 1974, p.8.

63. Programme on Prisons. (See Note 29)

This "invisible line" is substantiated by MacVicar (see Note 60) who says that in prisons "the most constant factor ... has been the resentment and hatred of their jailers, their personal dislike of the people who administer the system. ... It creates an

insurmountable obstacle to any efforts by the staff to exercise a reformatory influence, even if they wished to and are equipped to do so". Sunday Times op.cit., p.100.

64. Scotsman April 7th 1972.

65. Sykes, op. cit., pp.76, 77.

66. Scotsman 7.4.74.

The Swedes, far ahead of us in penal reform, hold that the main deterrent effect of a prison sentence lies in the loss of liberty, but that "the loss of liberty ... need not be accentuated by repressive means to be deterrent". The Scottish Prison System 1949. (See Note 47) p.42.

67. Prison Service Journal No.14, April 1974, p.7.

68. People in Prison, November 1969, (H.M.S.O.) p.106, para.245. "Imprisonment will always be with us, and detention for possibly longer periods, even permanently, will always be necessary". Professor Radzinowicz, Director of Cambridge Institute of Criminology and chairman of H.O. Committee on maximum security prisons. Sunday Times, 9.3.69.

69. 1) Time Magazine, January 18th 1971, declares that prisons cannot be abolished, for "15% to 20% of prisoners are dangerous or unreformable".
- 2) Paterson agrees: "If, however, a man is never likely to be a useful citizen, then a completely indeterminate sentence is the only safeguard that the courts can offer to society". Paterson on Prisons op.cit. p.66, and "There will always remain a residuum of habitual criminals who have resisted or evaded all efforts to train them for an honest life". (Ibid. p.641)
- 3) "Such evil-doers must be kept apart for long periods, in the exceptional case for life ..." Penalties for Homicide p.19, para. 42 (H.M.S.O. 1972).
- 4) "There will be a residue of irreversibly violent criminals They have to be outlawed from the community, literally life imprisonment". Journal of the Law Society of Scotland, Vol. 15, No. 4, p.81 (April 1970).

70. Scotsman 5.6.74.

More than 1400 were imprisoned in Scotland in 1972 for non-payment of fines.

71. 1) It is hoped that "the provision of residence for homeless offenders not merely as a means of preventing their return to prison but also as a 'possible alternative to imprisonment' for offenders of various kinds" may be increased. C.H. Rolph: Homeless from Prison. A Report on five hostels set up by the Special After-Care Trust, p.5. (London 1970).
- 2) Opinion in Britain is moving very slowly in the direction of more home leaves rather than of conjugal visits to the prisons, but "Prisoners are not eligible for home leave unless they are serving sentences of at least two years, or for preparation for release through outside employment unless serving more than four years". Times 12.6.74.
72. Prison Service Journal, No.14, April 1974. Editorial p.1. R.A.P. (Radical Alternatives to Prison), a pressure group whose ultimate aim is to end the present prison system. They suggest we should copy the American New Careers project where some prisoners in California are trained prior to release to work alongside probation officers. Scotsman 2.2.72.
- "Control in the community is a less drastic curtailment of freedom and is to that extent less repugnant. It is certainly less costly than imprisonment; but is it practicable and can it ever be effective as a protective measure? We are considering whether, in cases where it is agreed that there is need for protection, more use could or should be made of control without custody, either as a direct sentence of the court or as a period of licence following release from detention". The Dangerous Offender: A Consultative document prepared by the Flood Committee, and issued by the Institute of Criminology, University of Cambridge (March 1977).
73. Prisons in Scotland. Report for 1972 . p.7, para.27.
74. Ibid., p.66, App. No. 18.
75. Prison Service Journal No.14, April 1974, p.11.
76. 1) "Scotland, The Violent Nation". (Scotsman 9.3.74)
 2) Ibid. (Scotsman 11.3.74)
- In 1974 Scotland has 246 prisoners serving indeterminate or "life" sentences for murder, of whom 46 were under 18 when sentenced; the youngest in this category is only 15. (Scotsman 12.3.74) Also most disturbing is the increase in crimes of violence and cruelty to children.
- In the first two months of 1977, 18 people met violent deaths in Scotland - most of them in Strathclyde Region. There has been a 209 per cent increase in murder

convictions from 1955 to 1975, and in the past 15 years violent crimes in Scotland have quadrupled. The situation gives cause for great concern, and a new Scottish committee of 8 members has been set up to examine the problems of the rising crime rate. It includes the former Barlinnie Prison Governor, a criminal lawyer, a former Glasgow police convener and an ex-Chief Superintendent. The Committee will examine the penalties for murder, including the possible re-introduction of capital punishment; the increasing use of offensive weapons, particularly knives; vandalism; and Scottish prisons. Mr. Black, Secretary of the Scottish Police Federation, said, "Scotland is the most violent country in Europe right now. It is disheartening". Scotsman, 22.2.77.

77. Reparation by the Offender. Report of the Advisory Council on the Penal System. (H.M.S.O. 1970). Chap. 7.
78. Criminal Justice Act 1972, Sects. 1-6.
79. Scotsman 28.9.73.
80. Scotsman 10.6.74.
81. See case of K.J. Stapleton, a 24-year-old category A security risk prisoner, sentenced to 8 years for armed robbery. He has spent 20 months in solitary confinement, locked in his cell 23 hours a day, in Dartmoor and other prisons. There are no figures available on the number of British prisoners in solitary confinement and how long they have been there. Stapleton says, "If I am classed as a rotter now, one need only ask oneself what on earth type I'll be like on my release". The H.O. says "There is no medical evidence that his mental or physical health is suffering".
82. Bread and water prison punishment was abolished in British prisons in May 1974.
83. For attempting to escape from Gartree Prison, Sewell (who is serving a life sentence, recommended 30 years, for killing a policeman) was punished by losing privileges for 760 days, was given 392 days of non-associated labour and 56 days loss of earnings. This means that for 760 days Sewell was locked in his cell every evening after work, and for 392 days worked alone in his cell; the loss of earnings meant that for 56 days he was unable to buy anything. Scotsman 19.12.72.
84. See European Committee on Crime Problems: Collected Studies in Criminological Research Vol.1. "Research on the effectiveness of Punishments and Treatment", a Report presented by R. Hood, University of Durham

(Council of Europe, Strasbourg 1967). "Experience in England and America shows that in large closed institutions the inmate culture dominates the life of the prisoners and that treatment and custodial roles of the staff are in conflict. The large secure prison, it seems, by its social structure is an anathema to positive treatment of offenders ..." p.87.

The overriding impression received in all the prisons I have visited is of dedicated care shown by the staff from the Governor downwards, to the motley crowd of hardened criminals, inadequates, drug addicts, alcoholics and petty offenders who make up the prison population. This is apparent at the training centres of Perth and Saughton; at Barlinnie where the staff struggle with the overwhelming problems caused by gross overcrowding; at Friarton Borstal; at the Young Offenders' Institution of Dumfries; and at Penninghame, the only open prison in Scotland, where the inmates are usually restricted to a year's stay because "gate-fever" builds up unbearably. Cornton Vale, the only women's prison in Scotland, built by Borstal labour in 1975, (women prisoners were moved there from Gateside, Greenock), is described in a Scottish Home and Health pamphlet as a Vale of Hope, entirely new in concept and design. This prison consists of a complex of buildings in which the hard fact of confinement is skilfully camouflaged by ornamental wrought iron-work in place of merely functional bars, and by carefully tended flower-beds. Instead of galleries of cells in large central blocks, the institution (the word "prison" is avoided), is dispersed into small "cottage" units, each holding 7 inmates with their own "rooms" (not cells) of a high standard of comfort. Each unit has a kitchen and a large communal sitting-room with comfortable arm-chairs and T.V. The whole emphasis is on brightness and cheerfulness, and determined efforts are made to encourage the wrong-doer to think of the future rather than to contemplate her crimes. Whether this experiment will bring about the positive results aimed at remains to be seen.

At Charles Street Jail, Boston, Massachusetts, where both men and women are held (the majority black), a more cynical attitude prevails. The Director of Rehabilitation on being asked if he was getting anywhere, replied without hesitation, "Nowhere at all. Nowhere at all".

Notes. Conclusion

1. J.E. Thomas: The English prison officer since 1850. A study in conflict. p.1 (London 1972).
2. Rupert Cross: Punishment, Prison and the Public. p.169 (London 1971).
3. Karl Menninger: The Crime of Punishment. p.223 (New York 1971).
4. Programme on Prisons. Part I The Screws. B.B.C.2 10.10 p.m., 20th February, 1974.
5. "I am personally in no doubt that the value and virtue of any penalty imposed upon a person convicted of such crime", (violence and vicious crimes against the person) "must be judged primarily by the extent to which it can be expected to achieve the purposes of deterrence and prevention ... the judges will not hesitate to continue to use their ample powers to discourage the criminal and to protect society against him and his kind to the maximum extent possible". Lord Emslie's address to the Law Society of Scotland, The Role of Judges in Society in Scotland. Journal of the Law Society of Scotland July 1974, vol. 19, no. 7, p.208.
6. Attempted suicide was not a crime in Scotland whereas in England, until recently, it was.
7. Hugh Klare: People in Prison. p.137 (Pitman Publishing 1973).
8. Journal of the Law Society of Scotland. Vol. 15, no. 4, April 1970, p.81.

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